

THE ^G Gamesters LAW:

Wherein is Treated,

Of Unlawful GAMES. What Considerations are good to ground an *Assumpsit* for Money won upon Wagers and Bets. Several Cases on particular Games; as Dice, Cards, Horse-Racing, Cock-Fighting, &c. Of Pleading the Statute 16 Car. 2. c. 7. against *Excessive Gaming*, and the Explanation thereof, and what Securities given for Money won at Play, are avoided by the said Statute, in several nice Cases argued and resolved by the Judges. Of Cheats in Gaming. Remedy against Cheats, in several resolved Cases by Action at Law, or by Indictments, &c.

Of the Power of the Justices by the Common and Statute-Law, in punishing Offenders, and searching Gaming-Houses.

To which is added.

An Abstract of an Act passed in the Ninth Year of Q. Anne, for preventing *Excessive and Deceitful Gaming*, with some Observations thereon.

The Second Edition.

LONDON,
Printed by J. N. for Samuel Butler, at
Bernard's-Inn-Gate in Holborn, 1711.

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THE
Gamblers
LAW:

Of Unlawful Games. What Con-
ditions are good to avoid in playing
for Money upon Wagers and how
several Cases on particular Games: as Dice,
Cards, Horse-Racing, Cock-Fighting, &c.
Of Breeding the Gamesters, &c. &c.
Of Gaming, &c. &c. and the Explan-
ation thereof, and what Securities given for
Money won at Play, are avoided by the
said Statute in several nice Cases argued
and resolved by the Judges. Of Cheats in
Gaming, Remedies against Cheats, in several
resolved Cases by Action at Law, or by In-
digmment, &c.
Of the Power of the Justices by the
Common and Statute, &c. in punishing
Offenders and Gaming-Houses.
To which is added
An Abstract of an Act passed in the
Ninth Year of Q. Ann, for punishing Ex-
cesses and Disorderly Gaming, with some Op-
inventions thereon.

THE SECOND EDITION.
LONDON,
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Sturges's and Gutter's in Holborn, 1711.

THE PREFACE

THough by the Title
of this Treatise,
the Subject there-
of may seem small and in-
considerable, yet upon the
perusal, I conceive it may
be found to be otherwise.
Our Parliaments have not
thought it below the Dig-
nity of their August Assem-
blies to Enact Laws and
Statutes for the regulating
of Gaming under severe Pe-
A 2 nalties

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nalties against the Offenders: And our Grave Judges have not thought it below their Great Office to explain the said Laws, and to establish the Construction thereof by settled Resolutions, as well knowing the great Consequence thereof. And indeed if we consider how that the generality of People are very inclinable to Gaming and Recreations, especially at some stated times in the Year, and how that some are unwarily drawn in and imposed upon by Cheaters, and so lose their Money *alamaine*, and have been Trick'd out of good Estates, and others have

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have won Money fairly, and upon the Square by downright Gaming or Betting, and yet it hath been doubted how to bring and lay Actions for the Recovery thereof, or the best way to proceed against fraudulent Gamesters, or such as keep and use Games or Gaming-Houses not allowed by the Law, by Actions, Indictments, Informations, &c. The Construction of the Statute 16 Car. 2. against excessive Gaming, in pleading of it in Bar of Actions brought for Money won is very nice, and the several Doubts upon that Law are very fully and clearly re-

A 3 solved;

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solved: I say if we reflect on these matters, some Speculations of this nature may be thought, and I hope will prove to be very useful. Its true, Cards, Dice, Cock-fightings, Races, and such like Games are allowed by our Law duly Circumstantiated, and yet they receive but little Favour from the *Law*, especially when they run into excess. One Instance whereof, is, and a late one too (besides the aforementioned Statute of excessive Gaming) and that is a very prudent Proviso in the late Statute against Frauds committed by *Bankrupts*, which gives Benefit to Debtors who

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who will honestly come in and conform to the said Act. The Proviso runs thus. Be it provided and enacted, that nothing in this *Act* contained, shall extend to give or grant any Liberty or Privilege, Benefit or Advantage to any Person against whom a Commission of *Bankrupts* shall be awarded, who shall have lost in any one Day the Sum or Value of Five Pounds, or in the whole, the Sum or Value of One Hundred Pounds within the space of Twelve *Months* next preceding, his or her becoming a *Bankrupt*, in playing at or with Cards, Dice, Tables, Tennis,

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nis, Bowls, Shovelboord, or in or by any Cock-fighting, Horse-races, or other Pastime or Game, or Games whatsoever, or in or by bearing a part or share in the Stake, Wagers or Adventures, or in or by Betting on the Sides or Hands of such as do or shall Play, Act, Ride, or Run as aforesaid.

It is not easily to be accounted for, that many Persons of good moral Endowments, and of plentiful Estates, have been so eager, not to say furious in their Gaming and Betting : I cannot attribute it to a Principle of mere Avarice in
many

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many (tho' in most I fear it is so,) but rather think the Contingency of Winning and losing, and the Expectations thereupon are diverting. I conceive there would be no Pleasure properly so called, if a *Man* were sure to win always. Its the reconciling an uncertainty to our Desires that creates the Satisfaction.

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CHAP. I.

*Of Unlawful Games, and
what are esteemed such in
our Law.*

THAT Exercise of the
Body is expedient, and
in some cases Necessa-
ry, all agree. The
Physicians are of Opinion, that
some Recreations are more agree-
able to some Constitutions than
others, and therefore they pre-
scribe Ringing to one, Shooting
to another, and to some Bowling,
and to others Shovelboards, &c.
To open and dilate such parts of
the Body as are contracted and
B straitned

Of Unlawful Games.

straitned by viscous and tenacious Humours. But besides Recreations of the Body, there are other Pastimes which seem more apt to releivate the Mind and Fancy, when the Thoughts have been fatiguing upon some knotty and tedious Problems, and have been poring upon some *περὶ δυνάμειν*, some difficulties hard to be mastered, then to succeed with the *mollia tempora*, and to bestow some unbent Hours in a sociable Recreation may be very allowable and useful, such as Cards, Dice, Draughts, Chess, and the like. And I should esteem him a Wise and Temperate Man, who is induced to these Recreations by no other Consideration or Motive than either of Health of the Body, or the Sanity & relief of the *spirits*.

Now to say of Gaming in general, that it is utterly Unlawful, and *malum in se* I dare not affirm, tho' some Divines do hold divers of the said Recreations and Pastimes

times to be utterly Unlawful, as being actions wherein we neither bless God, nor look to receive a Blessing from him; nay such as we dare not pray to God for a Blessing on them, nor our selves in the use thereof. Now what Games are prohibited by our Common Law as Unlawful, and how far allowed as Lawful, you may see by our Statutes, especially in the Stat. 33 H. 8. c. 9. II H. 4. c. 4. Tables, Tennis, Footbal, Coyts, Dice, Bowls, Cloish, Cales, Half-bowls, Cards, Legats, &c.

Now these Games are not Unlawful in themselves, but prohibited under Circumstances; for Lawful Games may be followed Unlawfully, Intemperately and Unseasonably, and so the Gamesters are as great Offenders in *forocali* at least, as any others. Such are those as make a Calling of Gaming, and make it their main Business or Employment, and thereby endeavour to get other

Intemperate Gaming.

Of Unlawful Games.

Mens Estates and venture to lose their own, to the Ruin of themselves and their Families. The nature of commutative Justice requires, that when I received that which is another Man's, I should part with something of my own that is equivalent, and bears some due proportion to it.

Unseasonable Gaming.

Gaming may be also Unlawful by the unseasonableness of it, as such who spend whole Nights and part of Sundays, tho' it be after Divine Service: So to Frolique it in Gaming and Sports in times of publick Calamity or Danger: But Discourses of this nature I shall leave to those whose proper Business it is to instruct Persons in the Duties of Religion.

Mr. Dalton observes well like a Common Lawyer, that the Offences relating to Games are upon these Accounts.

1. Games are said by those Statutes to be Unlawful in respect of the Conditions of the Persons playing,

Of Unlawful Games.

5.

playing, such as Servants, Labourers in Husbandry, Apprentices, &c.

2. Persons keeping Gaming Houses for Lucre and Gain.

3. Persons haunting those Houses for Gaming sake.

And therefore, whereas it is enacted by the Statute of 33 H. 8. c. 9. that every Justice of Peace, as well within Liberties as out, may from time to time enter into any common House or Place where any playing at Dice, Tables, Cards, Bowls, Coits, casting the Stone, Foot-ball, or any other Unlawful Games now invented or hereafter to be invented, shall be suspected to be used, and may arrest the Keepers of such places, and Imprison them till they find Sureties by Recognizance no longer to occupy any such House, Game, Play, Alley or Place. And yet it was resolved, that if the Guests in any Inn or Tavern, call for a pair of Dice or Tables, and

B 3

for

for their Recreations play with them, or if any Neighbours play at Bowls for their Recreation, &c. that this is not within the Statute, for *these Houses are not kept for Lucre or Gain.*

Placard.

Now that Statute prohibited all manner of Persons to play at any Unlawful Games in any common House, Alley or place, except the Keeper of such House have a Placard what Games shall be there used, as also what Persons shall play thereat. *Note,* (Placard) comes from the *French* word *Placart*, and signifies a Licence whereby a Man is permitted to maintain Unlawful Games, *q. d. placitum, decretum, charta placiti*, but by the Statute 2 & 3 P. & M. c. 9. every such Placard is void.

It is said in the Case of Monopolies, *Cok. 11 Rep. fo. 85* that the playing at Dice and Cards is not prohibited by the Common Law, as appears, *Dier 154.* unless any be deceived by False Dice

Of Unlawful Games.

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Dice or Cards, for then he which is deceived shall have his Action on the Case for the deceit, and therefore the playing at Cards, Dice, &c. is not *malum in se*, for then the King could not Licence them to be made. King *Ed. 3.* in the 9th Year of his Reign by his Proclamation commanded the Exercise of Archery and Artillery, and prohibited the Exercise of casting of Stones, Bars, Hand and Foot-balls, Cock-fighting, *et alios viros Ludos*, as appears in *dors. claus. de An. 19 Ed. 3. No. 33.* yet this was of none effect till divers of them were prohibited under Penalties by Act of Parliament, 12 R. 2. c. 8. 11 H. 4. c. 4. 12 Ed. 4. c. 3. 39 H. 8. c. 9.

Foreign Cards were prohibited to be imported by 3 *Ed. 4.* for the benefit of poor Cardmakers in *England*; for divers poor Families were maintained by it, and therefore it was resolved in the said Case of Monopolies, that the

B 4

Queen

Of Unlawful Games.

Queen may not suppress the making of Cards within the Realm, no more than the making of Dice, Bowls, Balls, Hawks-hoods, Bells, Dogs-couples or otherlike, which are works of Labour and Industry, tho' they serve for Pleasure, Recreation or Pastime, and cannot be suppressed but by Parliament.

So you see that matters of Gaming, either as to restraining or allowance, and the determination of what Games are Lawful or not, is rather the business of a Parliament than a bare Proclamation.

Therefore I conceive King *James* I. was not well advised, *An.* 1618. when he declared to his Subjects these Recreations under mentioned to be Lawful, *viz.* Dancing of Men or Women, Archery, Leaping, Vaulting, May-games, Whifson-ales, Morris dances, setting up Maypoles, and other Sports therewith used; and commanded that no such honest Mirth or Recreation should be forbidden

forbidden to his Subjects upon Sunday or Holyday after Divine Service ended, which was confirmed by King *Charles I. A. D. 1633*, allowing further the Feasts of Dedications of Churches commonly called Wakes, and all manly Exercises to be there used with all Freedom. But *Tempora Mutantur*; our Gracious Queen and our Reverend Bishops will not Patronize any such Custom or Allowance. And, that the ignorant People were misled, and thought such Pastimes Innocent sort of Mirth appears by this Story of a *Welsh* Parson, *John* (a poor Boy) was bred up at School, and being a plodding Lad at his Books, used to assist some Gentlemens Sons that went to the same School. Afterwards *John* took a trip to the University and got a Degree and Orders: He, in process of time, upon some occasion comes for *London* in a tattered Gown: One day a Gentleman that had gon to

B 5 School

School with him, meets him, and knew him; *Jack* (saith the Gentleman) I am glad to see thee, how dost do? I thank you (Noble Squire) replied *Jack*. The Gentleman invited him to the Tavern, and after some Discourse of their School and former Conversation, the Gentleman ask'd him where he lived? *Jack* answered in *Wales*: The Gentleman askt him if he were Married? The Parson replied he was, and that he had a Wife and seven Children. Then the Gentleman enquired of the value of his Benefice, the Parson answered it was worth 9*l. per Annum*, Pugh! quoth the Gentlemen! How canst thou maintain thy Wife and Children with that, O! Sir, quoth *Jack*, shrugging his Shoulders, we live by the Church-yard, my Wife sells Ale, and I keep a *Bear*, and after Evening Service (my Parishioners being so kind to bring their Dogs to Church) I bring out my *Bear* and bate him, and
for

for about two Hours we are at Heave and Shove, Staff and Tail till we are all very hot and thirsty, and then we step in to our Joan, and drink stoutly of her Nut-brown Ale, and I protest (Squire) saith he, we make a very pretty Business of it.

CHAP. II.

What Considerations are good to ground Assumpsits for Money won at Gaming, or by Wager, or Betting. Whether a general Indebitatus Assumpsit lies for Money won at Play. Consideration good, for the Hazard, tho' the Game be Unlawful. Declaration in Trover for Money won at Cards of the Plaintiff's Wife. Whether a general Indebit. Assumpsit lies for Money won on a Wager. If Indebit. Assumpsit lies upon a Bill of Exchange.

I. What

Of Unlawful Games.

1. **W**HAT Considerations are good to ground *Assump.* for Money won at Gaming.

2. Actions for Money won by Wager and Betting.

3. What Considerations are good to ground an *assumpsit* for Money won at Gaming.

Whether a general Indebitatus assumpsit lies for Money won at Play.

In the Case of *Walter Whitgrave and Edward Chancey*, 1 Lut. 180. All the Court was of Opinion, that *Indeb. assumpsit* doth not lie for Money won at Play, but it ought to be a Special Declaration. It is said, 1 Keb. 216. Action on the Case will not lie for Money won at Dice, it being no Consideration for an *Assumpsit*; yet if one lose the Money when Drunk, he has no Remedy to avoid a Bond or Confession of Judgment by motion, unless some practice and deceit

deceit appear; tho' in *Egleton* and *Lewens's 3 Levins*, it seems a doubt. The Plaintiff declares in *B. R.* on *Indeb. assumpsit* (*Inter alia*) for 50*l.* *quas ei solvisse debuisset pro denariis per ipsum ad ludum vocat. pīctas chartas de defendente per querentem Lucrat. & acquisit.* Judgment *pro Quer.* per default. Writ of Enquiry and Intire Damages. Judgment *pro quer.* Error was assigned that a general *Indebitat.* for Money won at Play lies not; but a Case was cited to be adjudged in *B. R. M. 32 Car. 2.* where upon a Special Verdict it was adjudged that such Action lies, and of such an Opinion was the greatest part of the Judges inclined to be: *Sed adjornat. fuit*, for several said they would give no more encouragement for Actions won at Play than they needs must, *Pasch. 35. Car. 2.* *B. R. Levins 3d part*, I take the Opinion of *Whitgrave* and *Chancy's* Case to be the best.

Walker

Walker and Walker.

Indebet.
Assump-
sit for Mo-
ney won
upon a Wa-
ger does
not lye.

In 6 W. and M. in B. R. a Case was between *Walker and Walker*, *Indebet. Assumpsit* was brought for Money won upon a Wager, *Verdict pro Quer.* It was moved in arrest of Judgment, that no *indeb. assump.* lies for it. *Holt* Chief Justice. Here is indeed nothing to raise a Debt, for that must be upon Money Lent or some other Precedent thing, *1 Cro. Sand's Case*. It is true, it will lye against the Party that holds the Stakes, for by the winning the property is altered, and then it is Money received to the Winner's Use; there have been variety of Opinions in it. *Adjor.*

Another day *Darnel Serjeant*, moved in arrest of Judgment, that the Action was a general *Indebitatus* for Money won at Play, which is not a good promise in Law, for there is no Debt, and the *Verdict* being general and intire
Damages

Damages given cannot be good ;
There are Cases of both sides.
Sir B. Shore. In *Eccleston* and *Lewen's Case*, *Hil. 33, & 34. Car. 2.* in
Sir *Francis Pemberton's* time a
Judgment on this point was af-
firmed.

Holt Chief Justice: It was so,
but since we came hither we have
held the contrary. It does not
lye ; it is meerly as a Wager, and no
Indeb. Assumpsit lies for it ; for to
make that lye there must be a
work done, or some meritorious
Action, for which Debt would
lye, and it doth no so for this
Wager, for this is due in a colla-
teral Respect. It is true, the Cast
of a Dye alters the Property if the
Money be staked down, then 'tis
a Gift on Condition precedent,
and an *Indeb. Assumpsit* lies against
him that holds the Wager, for it
is a promise in Law to deliver it if
won, see *1 Croke Sand's Case*, *Tre-
vilian*, If a Man says to a Surgeon,
Cure such a Man, and I will pay,

*Difference
between
Money won
upon a Wa-
ger and the
cast of a
Dye.*

No Indebit. Assumpsit in a Bill of Exchange.

a good *Assumpsit* lies on this, because it is an Original Contract, and there is Labour in the way of his Profession. No *Indebit.* lies on a Bill of Exchange, and a Judgment was stay'd on that point in my Lord *Hales's* time, and the like was in the Exchequer; and its not material whether he on whom the Bill is drawn has Effects in his hands when he accepted the Bill or not; its not like a *Liberate* to pay Money on a Talley; when the Officer hath the Money the property of it is vested out of the King, and is in the Party, and I am sure my Lord Chief Justice *Polixfen* was of Opinion, that that Judgment was not well affirmed.

Medcalf's Case.

A. assumes to *B.* in Consideration that *J.S.* won a Game at Butts at one and twenty up, that he will pay to *B.* 10*l.* and if not, then
B. assumes

B. assumes to pay to A. 50 l. It is a good mutual Consideration, More 703. 1 Rols Abr. 78. Mesme Case.

Sutton vers. Jones.

A. and B. play at Tables, and in Consideration the Plaintiff assumed to give the Defendant his Mare if he get five Games, the Defendant assumes to pay 5 l. to the Plaintiff if he win five Games.

It is a good Consideration for the hazard, tho' it be an Unlawful Game, 1 Rols Abr. 17. Sutton and Jones.

Consideration good for the hazard, tho' the Game be Unlawful.

Johnson and Samworth.

The Defendant, in Consideration the Plaintiff would give to him 5 s. he would give to the Plaintiff 40 s. if he ever play'd at a Game call'd Even and Odd for Money, or Wine. Plaintiff avers he gave him 5 s. and that the

Consideration playing at Even and Odd.

the Defendant play'd at the same Game for, &c. such a Day and Year, *unde actio accrevit & verdict. pro Quer.* It was moved in arrest of Judgment, that there was not any such Play. But it was allowed, and the Court approved of the Consideration to restrain young Men from Gaming, Judgment *pro Quer. Raym. 13.*

Narr. sur. Trover for Money won of the Plaintiff's Wife at Cards.

T. S. queritur de B. R. in custod. marr. &c. pro eo videlt. quod cum idem T. (tali die & Anno) possederat. fuisset de centum libris in pecuniis numeratis in auro ut de denar. suis propriis tunc existen. & remanen. in manibus & Custodia M. tunc uxor. ipsius T. pred. (def.) sciens quod pred. 100l. in manibus & custod. ipsius M. existens & existens communis Lusor cum falsis aleis & chartis pictis ac machinans easdem vel magnam partem inde per

per falsas & deceptivas vias in manibus & possessione suis extra custod. ipsius M. acquirere & here. nec non eund. T. inde subdole decipere & defraudare ac credens ipsum T. peiorare & statu. suum penitus destruere pred. primo die, &c. apud L. in absentia ipsius T. illicite incitavit sollicitavit & procuravit eand. M. ad tunc & ibid. Ludere cum eod. R. ad chartas pictas ad quendam Ludum illicitum super eisdem chartis pictis Angl' at Noddy pro denariis ipsius T. in absentia & sine consensu ipsius T. ad quem quidem Ludum idem R. ad tunc & ibid. illicite & fraudulent. per deceptivam viam & medium Ludendi & decipiendi eand. M. acquisivit & Lucrat. fuit extra manus & custod. ipsius M. 40 l. in pecuniis numeratis in auro parcell. pred. 100 l. de denariis ipsius T. & easdem 40 l. ad usum & Commodum suum proprium ad tunc & ibid. disposuit & convertit Ad damn. ipsius T. &c.

Narr.

Of Unlawful Games.

Narr. sur Assumpsit pur payment
de deniers perdes sur un Shoot-
ing Match.

Tr. 19 El. Rot. 719. T. W. ar-
mig. versus J. B. de placito quod cum
25 die Sep. An. &c. Quoddam cer-
tamen Angl. a Match in sagittand.
ad metas vocat' Pricks inter quen-
dam C. L. mil. Dom. Effingham &
prefat. J. apud civitat. Nove sarum
extitisset quis eorund' C. vel. J.
certamen illud vinceret in primo ac-
quirendo de altero quindecim sagitta-
cones vocat. Shoots pred. J. in con-
sideracone quod idem T. tunc & ibid.
assumpsisset super se & prefat. J. pro-
misset quod si certamen pred. in
sagittando de pred. C. vinceret quod
tunc idem T. 10 l. prefat. J. solvere
& contentare vellet cum inde requi-
situs foret. sup. se assumpsit prefat. T.
& tunc & ibid. promisit, &c. solvere
& Contentare vellet cum inde requi-
situs foret. Ac licet pred. C. certa-
men pred. de prefat. J. eod. 25 die
Septembr. apud civitat. Nove sarum
vicit pred. tamen J. promission. &
assump-

*Assumpcon. suas pred. minime curans,
&c.*

*Vide the Case Reported, 2 Leon.
154. West and Stowell, & po-
stea hic.*

CHAP. III.

*Action about Horse-races, Foot-
races, mutual Promises. A good
Issue must contain a Positive Ne-
gative, and an Affirmative. Quod
cum, an Affirmative. Licet,
an Affirmative. Consideration
of the Treasurer of an Horse-
race. His delivering of a piece of
Plate to the Plaintiff, if it appear-
ed before Persons named, that the
Horse supposed to have won, was
not the proper Horse of the De-
fendant. When, The manner how
to make it appear, and before what
Persons it must so be proved, and
not by Tryal in the Actions. Con-
dition of a Bond to run a Race or
pay by such a day, the Defendant
is discharged by the death of the
Horse.*

Actions

Actions about $\left\{ \begin{array}{l} \text{Horse-racing,} \\ \text{Foot-race.} \end{array} \right.$

John Ernley Esq; Plaintiff, Henry Lord Falkland, and John Dod-dington Esq; Defendant.

Action on the Case on a Promise. Plaintiff declares, that whereas the seventh day of *Febr.* 1653, there was a Communication between the Plaintiff and Defendant concerning an Horse-race to be run the usual four Mile Course at *Burford* in *Oxon.* and it was agreed and concluded between them to run it with a Bay Stone Horse against a Gray Stone Horse on Thursday five Weeks next after that day, and between the Hours of two and four in the Afternoon, the one Rider to weigh 16*l.* more than the other who was to weigh ten Stone, and he, or they that lost, were to pay the other or others 200*l.* when

re-

requested. Whereas the Defen- ^{Mutual}
dants likewise, in Consideration ^{Promises.}
that the Plaintiff promised to per-
form his part of the said Agree-
ment promised to perform their
parts thereof, and then lays, that
tho' he had performed his part of
the said Agreement, and that the
Race was Run at the time, and
the Parties weighed as agreed up-
on, and that the Plaintiff's Horse
won the Race, the Defendant ^{Promise}
refused to pay the said 200 l. ^{not aver-}
and avers a particular Request, ^{red, but}
and after Verdict for the Plaintiff ^{laid by}
and Damages 200 l. It was moved ^{way of Re-}
in arrest of Judgment, because ^{citul.}
the Promise, which is the ground
of the Action is not sufficiently
averred, but laid only by way of ^{Issue must}
Recital only, whereas the Defen- ^{contain a}
dant promised, which is not di- ^{Positive,}
rect and positive. And 2. every ^{Negative,}
Issue must contain a certain posi- ^{and Affir-}
tive Affirmative, and Negative, ^{mative.}
but in this Issue there is no direct ^{Quod}
Affirmative, being said only with ^{cum.}

Quod
cum. au
Affirma-
tive.
Licet an
Affirma-
tive.

a *Quod cum*, and consequently this is a *Jeofail* not aided. *Per Chief Baron*, the Promise is certainly enough alleged, and is as direct an Affirmative as the word (*Licet*) in Debt, *Pla. Com.* 124. and there are two Presidents in the new Book of Entries, and seven in the old: *Whereas* is used in the very Promise, Judgment *pro Quer.* and *pas.* 29 *El. Mathew* and *Crane's Case* was cited in the Point. *Hard.*

fo. 1.

Considera-
tion for the
Treasurer
of an Horse
Race to de-
liver a
piece of
Plate to
the Plain-
tiff, if it
appeared
before Per-
sons nam-
ed, the
Horse sup-
posed to
have won
was not the
proper
Horse of
the Defen-
dant.

Debt by Bill Obligatory, De-
fendant binds himself to the Plain-
tiff in 40 l. to be paid to him *si*
ipse non deliberavit to the Plaintiff
a piece of Plate, which the Plain-
tiff being Treasurer of an Horse-
race, had delivered to the Defen-
dant, upon supposal that the De-
fendant's Horse, called *Cripple*, had
won it, if within three Months af-
ter the date of the Bill, it appear-
ed before the Lord *Brudnell* and
others in the Bill named, that
Cripple was not the proper Horse of
the

the Defendant for a Month before the Race, or that the said Horse had run any Race before: And the Plaintiff avers, that within three Months after the date of the Bill *sufficient. apparebat.* before the said Lord Brudnell & tres Testes *Averment* Credibiles, viz. A. B. C. by the *that it did* said Lord Brudnell examined, that *sufficiently* the said Horse called *Cripple*, was not the proper Horse of the Defendant, and this the said Lord Brudnell, &c. have declared & *appear, &c.* *quantum in ipsis fuit*, ordered the Defendant to deliver the Plate to the Plaintiff, which to do he refused, *per quod actio accrevit* for the 40*l.* Defendant pleads, that the Horse called *Cripple* was his *Plea that* proper Horse at that time, and for *the Horse* a Month before the Race Plaintiff *was not the* replies *Defen-* *dam's* *Horse, ill.* *protestando*, that it was not the proper Horse of the Defendant, *pro placito* saith, that within three Months after the date of the Bill *sufficient. apparebat* before the said Lord Brudnell, &c. that *Cripple* was

C not

not the proper Horse of the Defendant, as the Pl. declared *ut supra dict.* Et hoc paratus est, &c. Defendant rejoins, that Cripple was his proper Horse, & non sufficient. apparebat. &c. within the three Months, that the said Horse was not the proper Horse of the Defendant & de hoc ponit, &c. Plaintiff demurs specially because the Rejoinder is a departure from the Bar

Resolved,

When the manner how to make appear and before what Persons it must so be proved, and not by tryal in the Action.

1. That the Plea in Bar is insufficient, and no Answer to the Declaration; for when the Parties have agreed particularly in what manner shall be made appear, and before what Persons the matter shall be determined, and not by Tryal in the Action, as otherwise this should be if the Condition were general to make it appear.

2. The Rejoinder is a departure from the Bar, if the last part of the by the omission of the

the Words before the Lord *Brudnell*, &c. this had not been sufficient. Appearance generally is not the matter; but Appearance before the Lord *Brudnell*, &c. this is conclusive, wherefore Judgment *pro Quer.* 3 *Levins* 240.

Action was brought in *B. R.* on an Obligation, the Condition was to run a Race, or to pay by such a day, it was adjudged that the Def. was discharged by the death of the Horse, cited in 3 *Keb.* 771. Condition of a Bond to run a Race or pay by such a Day, the Defendant is discharged by the death of the Horse.

Narr' Assumpsit upon a Wager of a Foot-race.

J. W. Attach. fuit ad respond' J. C. de placito quare cum 9 die J. &c. Ann. &c. apud villam Cant. quoddam colloquium habit. & junct. fuisset int. ipsum J. C. & prefat. J. W. de & concernen' quoddam iter pedestr' per ipsum J. C. a domo mansionali ipsius J. scituat' & existen. in ead. villa usq; ad & in villam de Waltham in Com. Hert. decimo die J. tunc prox. sequen. inter ortum &

C 2 *occasum*

occasum solis ejusdem diei perficiend'
 pred. J. W. in conf. qd. idem J. C.
 ad speciales instantias & requisit'on.
 pred. J. W. scilicet. pred. nono die
 J. apud villam C. pred. deliberaret
 cuidam P. W. octogint. solid. Legal.
 monete Angl' per eundem P. salvo
 custodiend. & prefat. J. W. ad
 usum ipsius J. W. propr' per pred. P.
 deliberand. si idem J. C. hujusmo-
 di iter pedestre suum super pred. de-
 cimo die J. in forma pred. minime
 perficeret pred. nono die Junij Ann.
 20. supradict' apud villam C. pred.
 super se assumpsit & eid. &c. quod
 die pred. J. W. novendecim libras &
 quindecim solid. consilis. monete post-
 quam idem J. C. iter pedestre pred.
 in forma pred. perficeret super redi-
 tum ipsius J. C. a pred. villa de W.
 usq; in villam de C. ante horam
 pred. bene & fidelit. solvere & con-
 tentare vellet Ac licet idem J. C.
 super spe fidelis performac'onis pro-
 mission. & assumpton. pred. J. W.
 predictar' ut premititur fact' postea
 scil. eod' none die J. Ann. &c. supra-
 dict'

dict' apud vill' C. deliberavit pre-
fat. P. 80. solid. Leg. &c. per
eund' P. salvo custodiend' & prefat.
J. W. ad usum ipsius J. W. propr' per
pred. P. deliberand. si idem J. C.
super eod. 10 die J. in forma pd. mi-
nime perficeret Licetq. etiam idem
J. C. super eod. 10 die J. post ortum
solis ejusdem diei pedibus suis ambu-
lando a domo man' onali sua pred.
versus pred. villam de W. decessit &
ante occasum solis ejusdem decimi-
diei usq; & in eand. villam de W.
per totum iter illud' similiter pedibus
suis ambulando pervenit Licetq; in-
super idem J. C. postquam hujus-
modi iter suum sic perfecisset ab ead.
villa de W. usq; & in villam C.
pred. 13 die J. tunc prox' sequen.
rediit & accessit pred. tamen J. W.
promiss. & assump. suas minime cu-
rans sed machinans & fraudulent.
intendens eundem W. in hac parte
callide & subdole decipere & de-
fraudare pd. 19 l. & 15 s. eid' J. C.
super reditum ipsius J. C. pred. seu
unquam postea juxta promissioni

& assumpcon' suas predict'. licet ad hoc faciend' idem Des. per quer' pred. 10 die Junij Ann. vicissimo supradict' apud C. pred. sepius requisit. fuisset non solvit seu aliquat' pro eisdem contentavit set ill. ei huc usq; solvere seu contentare omnino recusavit & adhuc recusat ad damnum ipsius J. C. 40l. & unde idem J. C. per L. E. attorn' suum queritur quod cum 9 die Junij (ut supra verbatim usq;) & inde producit sc&am, &c.

CHAP. IV.

Pleadings.

The Statute of 16 Car. 2. c. 7. explained by Pleadings.

Recital of the Statute, restrains not playing for ready Money. The Design of the Statute is to avoid Securities given for Money Lost. A Ring is lost value 20l. and delivered, and Bond given for 100l. lost, if this Bond is within the Statute. A Race to be run for

for 100 l. at one time, and 100 l. at another time, and one is only run for, if it is within the Statute. Security intire, and look'd upon according to the first Contract. 90 l. is lost to the Plaintiff, 30 l. to another, and 60 l. to another at one meeting, if it is within the Statute. A Wager of 100 Guineas upon a collateral Matter, and the event of it does not depend on the success of the Game, if it be within the Statute, argued by the Judges. Defendant pleads the Statute, that he lost 100 l. to one upon Tick, and 30 l. to another upon Tick at the same meeting, if it be within the Statute. of 16 Car. 2. pleaded at large. How the Court takes notice of Guineas. Guineas how to pass legally. Wager on the right of Play, if it be within the Act. How to Declare for Guineas. How to Declare on Foreign Coin. Of Averment against one's own Deed. Bill of Exchange

C 4

Of Unlawful Games.

change for Money won at Play, if within the Statute. Where a Man may plead that Specially which he may give in Evidence. Custom of Merchants as to Bills of Exchange. Bill of Exchange for Money won at Play assigned over to a Creditor. Assignment of an Usurious Bond to a Creditor. A Man loseth ready Money, and the Winner lets him have it back again on his Note, if within the Statute.

Danvers and Thistlethwayt.

NOW in *Danvers and Thistlethwayt's Case*, 1 *Levins* 244. *Assumpsit* was brought on a feigned Action out of Chancery, and the Case was: *Danvers and Thistlethwayt* playd at Dice. *Thistlethwayt* won of *Danvers* a Watch value 10*l.* which was presently delivered, and also an 100*l.* for which he gave Bond: If this Bond be void by the Statute of 16*Car.* 2. was

The Stat'
restrains
not playing
for ready
Money.

was the Question. *Per Cur.* the Bond is good, for the Statute doth not restrain Playing for ready Money, and the Watch delivered is as ready Money.

But this Case is more fully reported in *Siderfin*, fo. 344. Debt on Bond for payment of 100 l. Defendant prefers his Bill in Chancery to be relieved against this Bond, suggesting it was for Money won at Play, and upon this Issue it was directed to be tryed in B. R. and it was tryed in *Wiltes*. Special Verdict find, that there was a Ring lost at Play of 20 l. value, which was paid, and there was also lost at Play at the same time 100 l. upon Credit, for which the Bond was given, and they also found the Statute 16 Car. 2. c. 7. against excessive Gaming, and if this was within the said Statute was the Doubt. The words of the Statute to this purpose are, *That if any Person shall Play at any of the said Games other*
C 5 *than*

then with or for ready Money, or other thing, &c. exceeding the Sum of one hundred Pounds at one time, or meeting, upon Tick or Credit, or other thing so play'd for above the Sum of 100 l. shall not be bound to pay the same; But the Securities shall be void: And if this Obligation were void by the Statute was twice argued.

Windham Justice on the second Argument, seemed that this Obligation was void within the Statute, and that the word (otherwise) extends to avoid Securities when more than the value of 100 l. is lost (or otherwise) ought to be other than what is before, which is on Tick or Credit. And it ought to be intended of ready Money or other thing, as here was a Ring: And it being a remedial Law against Gaming ought to be taken largely. *Keling* and *Twissden* were of Opinion, that it is not within the Statute, for the Design of the Statute was to avoid Securities

*Design of
the Stat' is
to avoid
Securities
given for
Money lost.*

Securities given for Money lost at Play, which was oft times the ruin of Estates, but did not regard ready Money, because it is not to be presumed, that Persons would bring their Estates in their Pockets. And by the Chief Justice, if one lose an 100 l. in ready Money, and also give Bond for 100 l. which was all lost together at Play, that this is not within the Statute: And the word (otherwise) doth not relate to Money lost and paid, but to that only which is secured: But *Twifden* thought if Money was lost and paid, and a Bond for 100 l. more, that it is within the Statute, *Quere bien*. But after the Cause being moved again, Judgment was given for the Defendant, that the Obligation was good, and not avoided by the Statute, *Moreton contradicente*.

Ring value 20 l. lost and delivered, and Bond for 100 l. given, the Bond is not within the Stat. 100 l. lost in ready Money, and Bond given for 100 l. the Bond good.

*A Race to
be run for
100 l. at
one time,
and 100 l.
at another,
and one is
only run,
for its
within the
Statute.*

*Security in-
sire and
look'd upon
according
to the first
Contract.*

Articles of Covenant to run an Horse-race for an 100 l. at one time, and 100 l. at another time, and one is only run for, yet it is within the Statute, being all one and the same Contract, and at one and the same time, 2 *Levins* 44. as a Bond to run three several days, its forfeit on the first Loss; and though no more be plaid or lost, yet the Bond is void, or any other Security that is intire; for its look'd upon according to the first Contract, and not according to the Contingent, whether more or fewer times be play'd. Also a Bond of 1000 l. to pay all such Money as is lost by Gaming at such a time, though only one hundred Pounds be lost, yet this Bond is within the Statute. So where it is to Game at several days, and the one day the Plaintiff wins of the Defendant 100 l. and the other the Defendant wins of the Plaintiff 100 l. this is void. And *per Cur.* this is to be taken as strictly

strictly as the Statute of Usury,
 which makes a Contract to pay *Usurious*
 6*l.* per Cent. and 6*l.* more if I ^{Contract}
 desire it; here, tho' I do not de- ^{void by the}
 sire the other 6*l.* yet the Contract ^{original}
 is void. Judgment for the Def.
 3 *Keble* 259, 260. *Edgbury* and
Rosendale.

Debt was brought on this Sta-
 tute, the Defendant won 80*l.* at
 one meeting, and another meeting
 was appointed, and the Defen-
 dant won 70*l.* more of the Plain-
 tiff, above 100*l.* in all. The
 Question was, if this be within ^{Above}
 the Statute; and the Court was ^{100*l.* won}
 divided, the better Opinion was, ^{at several}
 that it was not within the Statute; ^{meetings}
 Though if it had been pleaded, ^{appointed.}
 that the several meetings were pur-
 posely to elude the Statute, it
 might be otherwise; 2 *Mod.* 54.
Hill and *Pheasant* in *B. C.* and
 the Case of *Edgbury* and *Rosendale*
 in *B. R.* was cited.

Whether

Whether the Statute extends to different Gamesters, or only to one or more Parties intrusted.

It was *Hudson* and *Malim's* Case, Tr. 28. Car. 2. B. R. Debt was brought upon Bond; Defendant pleads the Stat. of 16 Car. 2. c. 7. and that he lost at most at three throws 90*l.* to the Plaintiff, and at the same time, he lost at Cards to A. 30*l.* and to B. at Bet,

90*l.* Lost 60*l.* more. Plaintiff Demurs, because it doth not appear that these are Parties together or in Trust one for another; and the Statute doth only avoid Debts won of one or more that are Parties entrusted for each other, as in *Danvers's* Case, the Act was held not to extend to different Gamesters; but that's a mistake, for *per Cur.* It is not material to whom the Party becomes indebted, for the words of the Statute are, that the Plaintiff should not lose more than 100*l.* at one time or meeting up-
on

90*l.* Lost
to the
Plaintiff,
30*l.* to a-
nother, 60*l.*
to another
at the
same meet-
ing, its
within the
Statute.

on Ticket. Judgment *pro Quer.*
If the Wager be on a mere Collateral Matter, and the event doth not depend on the success *Quer.* of the Game, it be within the Statute of 16 Car. 2.

St. Leiger's Case.

I. de St. Leiger nuper, &c. als' *dict.* &c. *summonit. fuit ad respondend.* Rogero Pope Arm. de placito *Det pro* quod reddat ei 107 l. 10 s. quas ei *107 l. 10 s.* debet & injuste detinet & unde idem Rogerus per A. B. Attorn. suum dicit quod pd. I. St. Leiger & Rog. P. 8 Julij 1691. apud Paroch' &c. Latrunculis Luser. ad Ludum Angl' vocat Backgammon *Narr. for* cumq; ad Ludum ill. pred. R. ad- *the value* tunc et ibid. uno jactu jecit quatuor *of 100* super unam aleam. & quatuor super *Guineas* alteram aleam Angl. threw Two *upon a Wa-* Fours, Cumque super inde pred. *ger concern-* Rog. adtunc & ibid. tetigit *ing the* & paulatim movit duos Latrun- *playing of* culos suorum illorum Anglice two of *a cast at* his Table-men, sed non amovit *Dice by the* amovit illos a statione sua Anglice *Plaintiff.* off

off from the point they stood on,
Cumq; superinde adtunc & ibid.
pignore certat. fuit Anglice a Wager
 was laid *inter pred. I. St. Leiger*
& prefat. Roger' modo sequenti
(viz.) Quod pred. Rogerus solveret
prefat' Johi' St. Leiger centum &
quinguent. nummos aureos Anglice
vocat' Guineas si prefat' Rogerus
tenebatur jure Lusus illius amovere
Anglice to Play duos Latrunculos
istos quos ita movit Et pred. I. St.
Leiger & Rog. P. adtunc &
ibid. pro determinatione pignora-
tionis illius Anglice of that Wager po-
suer' se super judicium Atriensis
Anglie Anglice of the Groom-Porter
of England, Cumq; pred. I. St.
Leigereisdem die & Anno supradict'
apud Paroch' pred. per scriptum
suum sigillo suo sigillat' Curieq; Dom.
Regis & Dom. Regine nunc hic
ostens' cujus dat' est eisdem die &
Anno cognovit pignorationem pred.
Anglice the said Wager. Et pred.
I. St. Leiger per idem scriptum obli-
gavit seipsum solvere prefat' Rog.
 P.

The Wager
 to be deter-
 mined by
 the Groom-
 Porter.

P. vel ordini suo centum nummos aureos Anglice vocat. Guineas, quando Atriensis Anglice so soon as the Groom-Porter adjudicaret Anglice should give his Judgment in casu ill. si acciderit iudicium illud fore contrapred. I. St. Leiger Et in facto idem Rogerus dicit postea post confessionem scripti pred. & ante impetrationem brevis originalis pred. Rogeri in Cur. hic scilt' (tali die & Anno) quidam T. Neale Armig. tempore confessionis scripti pred. & diu antea & abinde et adhuc existen' Atriensis Anglie Anglice the Groom-Porter of England, in casu pred. adjudicavit contra pred. I. St. Leiger scilt' quod pred. Rog. non tenebatur jure Lusus illius amovere Anglice to Play duos Latrunculos illos quos ha movisset nisi movisset illos a statione sua Anglice off from the point, Quodq; centum nummi aurei Anglice vocat Guineas tempore confessionis scripti pred. & diu antea fuer' et adhuc existunt valoris 107 l. 10 s. scilt. apud Paroch' pred. in Com'

The Deed upon which the Action is grounded.

Judgment of the Groom Porter for the Plaintiff.

*Com' pred. unde pred. I. St. Leiger
 actunc & ibid. huit. notitiam pred.
 tamen I. St. Leiger Licet sep. requi-
 situs, &c. ad damnum, &c. Et pred.
 I. St. Leiger per C. D. Attorn' sum
 ven. &c. & petit auditum scripti
 pred. Et ei Legitur in hæc verba N.
 I. John St. Leiger of, &c. Esq;
 doe own that I have betted with
 Lieutenant Collonel Roger Pope
 an 100 Guineas against 150, con-
 cerning the Dispute arising on the
 manner of playing a cast at Back-
 gammon, which is stated and
 signed by us both and Captain
Francis Chantrell, and referred to
 the decision of the Groom-Porter
 of *England*. And I do by these
 Presents oblige my self on the
 Word and Honour of a Gentleman,
 to pay unto the said *Roger Pope*,
 or his Order, or whom he appoints
 to receive it, an 100 Guineas, so
 soon as the Groom-Porter gives
 his Judgment on the Case, if it
 so happen, the Judgment be
 against me. The Question to the
 Groom-*

Groom-Porter is stated under the Letters of A. B. and C. John St. Leiger is meant by A. and Roger Pope by B. given under my Hand and Seal the 18th day of July 1691. *Quibus lectis & auditis idem I. St. Leiger dicit quod ipse de debito pred. virtute scripti pred. onerari non debet quia dicit quod in statuto in Parlamento Dom' Car' secundi nuper Regis Anglie inchoat. apud Westm' in Com' Midd' octavo die Maij Anno Regni dict. dom' nuper Regis decimo tertio & per diversas prorogationes et adjournam' ibid. continuu' usq; 16 diem Martij Anno Regni ejusdem nuper Regis 16 inter alia authoritate ejusdem Parlamenti Ordinat' & inactitat' fuit quod si aliqua persona vel persone ad aliquod tempus vel tempora post 29 diem Septembr. in Anno Dom' 1664. Luderet ad & cum pictis chartis Anglice Cards, aleis lustrunculis pilis palmarijs Anglice Tennis, globulis Anglice Bowls, clavis Ligneis Anglice Skittles,*

Plea of
the Stat.
16 Car. 2.
agaist ex-
cessive
mensa

mensa Lubrica Anglice Shovel-
boards, vel ad alium Lusum Anglice
Pastime, Ludum vel Ludos quos-
cunq; (aliter quam) cum & pro
pecunijs depositis Anglice ready
Money, vel pignoretur Anglice
shall Bet, Ex partibus Anglice upon
the sides, vel super manus eorum
qui Ludunt vel Luderent ad inde
& perderet aliquam summam vel
summas monet. vel aliam rem vel res
sic in Lusum posit. Anglice plaid for
exceden. summam centum librarum
ad aliquod unum tempus vel con-
gressum super notam Anglice upon
Ticket, vel credentiam Anglice
Credit vel aliter & non solveret ead.
in manibus Anglice shall not pay
down the same ad tempus quand.
ill. vel illi sic perderent eadem per-
sona vel persone qui perdiderunt sive
perdiderint dict' monet. vel aliam rem
seu res sic in Lusum posit. sive ponend.
Anglice so plaid, or to be plaid for,
ultra summam centum Librarum in
tali casu non obligabitur vel com-
pelletur vel compellendus erit solvere
seu

seu respondere Anglice make good,
ead. sed contractus pro eisdem &
pro qualibet parte inde & omnia &
singula iudicia statuta recognit' An-
glice Recognisances, morgagia An-
glice Mortgages, Conveyance,
Assurance, obligac' ones Angl' Bonds,
bille specialitates promission' con-
venc' ones agreeamenta & alia acta
facta & securitates quicunq; que
erint obtent. fact. dat. cogn. sive in-
trat' Anglice entered into pro secu-
ritate vel satisfactiō' eorundem vel
pro eisdem vel aliqua parte inde erint
vacua et nullius effectus prout per
iud. actum inter alia plenius liquet
& apparet. Et idem Johannes in
iusto dicit quod post 29 diem Sep-
tembris, Anno Dom' 1664, & ante
confectionem Scripti pred. videl.
pred. 18 die Julij Anno Dom'
1691. supradict. apud Paroch' pred.
Com' pred' ipsem idem Johannes &
pred. Rogers Ludabant cum aleis
ad quendam Ludum vocat Back-
gammon quodq; pred. centum num-
mi aurei vocat' guineas in pred.
script'

*Averment
of the Bet.*

*Not in rea-
dy Money.*

Value.

*script' menconat' adtunc et ibid. ad
unum tempus et congressum Anglice
meeting fuer' pignorat' Anglice
betted, ex eundem Johannem cum pd.
Rogerio & perdit in Lusu illo & non
cum vel pro pecunijs deposit. Anglice
ready Money Quodq; pred. nummi
aurei vocat. Guineas tempore pigno-
rationis illius Anglice at the time of
the said Bet non tempore adjudica-
ture in narratione pred. Rogeri per
Thomam Neale in ead. narratione
menconat. fieri supposit' fuer' valoris
ultra summam centum Librarum
videlt. valoris centum & septem
librarum & decem solidorum superius
petit' (videlt) apud Paroch' pred.
in Com' pd. Quodq; ed. centum num-
mi aurei tempore Lusus illius non
fuerunt pignorat' Anglice Betted in
pecunijs deposit. Anglice ready Mo-
ney neq; tempore adjudicationis per
in narratione pred. fieri supposit' solus
sed pro securitate solucon' per
centum nummorum aureorum per ipsum
Johannem cum predicto Rogerio
presertur pignorat. Anglice Betted*

Idem

Idem Johannes rostea scilicet. pred. 18 die Julij Anno Dom' 1661. supra dict. apud Paroch' pred. in Com' pred. scriptum pred. in narratione pred. mentionat. prefat' Rogero dedit sigillavit & ut factum suum deliberravit per quod ac vigore statuti predicti in eo casu inde edit. & provis' scriptum pred. fuit & est vacuum & nullius vigoris in Lege. Et hoc paratus est verificare unde pet. judicium si ipse de debo. virtute scripti pred. onerari debeat, &c..

General Demur. per Francisc. Pemberton, Cr. Levinz.

1. It was debated, whether this Case was within the Statute of 16 Car. 2. c. 7.

Per Cur. It is not within the Statute, because it was a mere collateral matter, and which happens on mere chance, and the event of it did not depend on the success of the Game: And also the Act expressly prohibits Wagers upon

upon the Hands of the Players, and if they had intended any other Wagers, it is probable mention would have been made of them. Objection was to the Declaration (*viz.*) that no place was alleged where the Groom-Porter gave his Judgment. *Per Cur.* there is a place alleged, for it is said, that the Groom-Porter *adjudicavit quodq; pred 100 Guineas fuer' valoris, &c. apud Paroch' Sancti Martini in campis.* But if the place had been omitted, yet the Declaration was good; for that the Defendant had confessed the Fact, and then this is cured by that, according to *Sir Richard Grubham's Case, Hobt. 82.* and *Hardie's Case, Telw. 11.* and *2 Cr. 682. Buckland's Case.*

2. It was objected, that it doth not appear by the Declaration, that the Groom-Porter had given any Judgment in the Case; for that it is not alleged, that the case stated was rendered to the Groom-Porter,

Porter, or that he had given Judgment upon it.

Resp. It was answered by the Defendant's Counsel, that by the Declaration it appears there was a Wager between the Parties, and what it was: And then it is also alledged, that the Groom-Porter *adjucavit in casu pred.* and the Plaintiff had Judgment in *B. C.*

Error was brought, and the Judgment was reversed, for that the Declaration was naught; for the Plaintiff ought to have declared upon the Fact and the case also; and then to have shewed that the Case was brought to the Groom-Porter, and that he had given his Judgment upon it. But here the Plaintiff had taken upon him to aver the purport of the Case, without producing of it, which is not to be suffered; and altho' the Declaration by way of recital had shewed the substance of the Case, yet when it is in writing, the writing it self ought to be produced,

D

and

*Plaintiff
ought to de-
clare upon
the Fact
and the
Case also.*

and it was adjourned for this time. But in *Trin. 7 Will. 3.* the Judgment was reversed, because the Plaintiff had shewed the Case, Play, and Wager, and then the Deed by which the Parties Bound themselves in *pignorat. pred.* and upon *Oyer* of the Deed, it appears that it was to stand to the Judgment of the Groom-Porter upon a Case stated, and signed by us both, which is not the same, and therefore the writing comprehending the Case ought to have been shewed, and Averment ought to have been taken, that the Case in it and the Declaration were all one: And tho' it was urged, that the Inducement of the Case and this stated are all one, and therefore, whether the Averment was before the Deed or after is not material; yet the Chief Justice was of another Opinion, because the Declaration supposeth the Deed to be to perform a Wager comprized in the Deed, where it

Averment.

is to perform a Case extrinsecal,
and which is to be coupled by
Averment.

Another matter moved was,
that it is not averred, that the 100
Guineas were not paid in Specie,
and for this *Vide Russell* 158. *Tel.*
135. *Poph.* 28. 1 *Cr.* 515.

1 *Lut.* 484. *Pope* and *St. Leiger*.

This Case was argued in B. R.
on Error 7 *W.* and *M.*

Broadrick. The Plaintiff de-
mands 100 Guineas *valoris* 107*l.*
10*s.* in *B. C.* Defendant pleads,
that when the Wager was laid, he
and the Plaintiff were at play at
Tables at a Game called Back-
gammon, and pleads the Statute
of Gaming, and avers, this was
for Money won at Play, and be-
ing for above 100*l.* was void by
the Statute. To which the Plain-
tiff Demurs, and Judgment was

D 2

given

given for him in B. C. and we bring Error. And,

First, I think Debt will not lye on this Wager. And,

2. The Plaintiff ought to Declare of so many Guineas *valoris*, &c. *Yelv.* 80. *2 Cr.* 86. *1 Lev.* 41. those Cases I agree, but here a Guinea is *English Money*, of which the Court takes notice, and in such Cases it is never declared *ad valentiam*, *Litch.* 84. A Guinea in Law is no more than 20 s. but in an Action on the Case Damages shall be given for them according to the value; but in debt for them the Plaintiff never Declares for more than 20 s. and so you lately adjudged in this Court in the Case between *Harri-son* and *Byron*, in which Case it was adjudged, 1. That the Court judicially takes notice of a Guinea.
2. That the legal value of it is but 20 s. tho' by Consent it may pass

How the
Court takes
notice of
Guineas.

The value
of a Guinea
in Law,
and how to
declare.

pass for more : So that this Judgment is erroneous. 1 *Sand.*

316. the Deed being entred ^{Deed entered of record parcel of the Plea.} of Record, is parcel of the Plea, and if by that it appears,

that the Plaintiff has no cause of Action, he cannot have Judgment, tho' the Defendant has misbehaved himself, *Hob.*

149. 56. and therefore our admittance of the value of the Guinea will not hurt us, for we need not to have mentioned this variance from the Deed, and this was a point not touched in the Common Pleas. Then *non constat* in what Case (*in casu illo*) for its not mentioned before, and the Money is not to be paid by the Deed before the Groom Porter has given his Judgment in that Case, then our Plea is good, for we plead the Statute of Gaming, and that being at Backgammon, these hundred Guineas

*Averment
against
ones own
Deed.*

were wagered on that Game, and so not for ready Money it is void by the Statute; now we may aver by the Statute against our own Deed, 2 Cro. 253. Mo. 641. 2 Sid. 88. and the Demurrer hath confessed this; and tho' the Averment is not good, yet it appears by the Declaration to be within the words and intention of the Statute of Gaming, for the Money is above an 100*l.* and is lost on Tickets, and it appears by the Declaration how it was lost, that it was at Backgammon, and that the Money was won at Play at that Game, tho' the Judgment of the Groom-Porter was at another time; and the Statute of Gaming would be of little use, if it is not extended to By-betts, but only to the Gaming it self; and this Act hath always been construed liberally, and therefore where a
Man

Man lost 80 l. at one day, and then the Parties agreed to Play at another day when 80 l. more was lost, this was adjudged to be within the Statute, and to be but one loss, and that Statute was made to prevent great Mischiefs. If any of the Points are for us, then I pray that the Judgment may be reversed.

Holt Chief Justice. Do you make laying a Wager to be within the Statute of Gaming? It is true they were at Play when the Wager was laid.

Eyer G. J. Suppose that the Wager by the by. Wager had been, that the Tables were made of *Brazeel* had this been within the Statute? Certainly no more shall this.

Holt Chief Justice. Guineas were coined at the Mint, for 20 s. only, and there was ne-

Guineas,
how so pass
legally.

ver any Proclamation to make them pass; tho' there was one to take the twenty Shilling-pieces: It is true by Consent they may pass for more than 20 s. but legally no more is to be demanded for them than 20 l. The Guinea was coined according to the 20 s. piece. We call them Guineas by agreement; but how can we take notice of what value they are? If the Plaintiff had declared of 20 s. pieces, we must judicially have taken notice of them. Then suppose this should be taken for gaming, as there was a case in my Lord *Hales's* time, the condition of a Bond to perform Covenant (which were) to run an Horse-race, &c. *vide supra* *Edgbury* and *Rosindale*.

Pemberton Serjeant. It is plain that this is not within the Statute of Gaming; for to make
it

it so, it must be betted on the hand of the Plaintiff or Defendant; but this Wager was laid on a collateral Matter, on the right of Play, which is not within the Act. As to the Declaration, the Writing produced maintains it, for it is the very same with the Declaration. Then we lay that the 100 Guineas are *valoris* of 107 l. 10 s. of which you must take notice, for it is a Coin by it self, and is not any noted piece of the Kingdom, as the Twenty Shilling pieces are, for there is no Proclamation to make them pass, but a Guinea is in nature of a Medal, and is more like a Foreign Coin, and is much of that nature, and there are several Declarations of so many Dollars *valoris* so much, and yet you know the value of a Dollar, and this is like that which you cannot take notice

*Wager on
the right of
play not
within the
Act.*

Guineas.

of, because it is not the current Coin of England.

*Indictment
for Counterfeiting
Guineas.
Guineas
current
Coin,*

*How to de-
clare on
Foreign
Coin,*

Holt Chief Justice. Brother, do you think that it is not High Treason to counterfeit Guineas? Certainly it is, the Indictment shall not run for Counterfeiting of Guineas, but of so many pieces of 20 s. value; a Guinea is the current Coin of the Kingdom, and we are to take notice of it. The Guineas were coined after the Proportion of *Carolus's*, that is 16 d. weight less to the value of 20 s. Only the Question is if we can take notice of the Allegation of the value of Guineas, because there are other sorts of them, as 5 l. Guineas. Where you Declare on a Foreign Coin, you must declare in the *detinet* only, and not in the *debet*, and so in an Action of Debt for Goods, as Corn,

&c.

&c. tho' Debt lies on the Contract, yet it must be in the *detinet* only; its always so, unless the Action of Debt be for English Money.

At another day.

If an Action of Debt is brought for the value of English Money, as it may, then it is to be laid in the *debet & detinet*; but if it be for a Foreign Coin or Goods, as for a Quarter of Corn, and the Plaintiff shews the value as he must, there it must be in the *detinet*.

Holt Chief Justice. Now here these are called Guineas, which if it is a Coin not known in our Law, we must take them to be as Goods.

Eyre.

Eyre Justice. Then the Defendant confesseth the value of them, as the Plaintiff has alleged.

Holt Chief Justice. But it is 100 *nummos aureos*, *Anglice* Guineas. What is that? it is very uncertain. Indeed if it had been 100 *pecias auri vocat.* Guineas, it had been well enough.

Nummos
aureos
Anglice
Guineas.

At another day the Judgment in *C. B.* was reversed.

Term St. Trin. 8 *W. 3. B. R.*

Hussey and Jacob.

Sir B. Shower. This is an Action on the Case, on a Bill of Exchange for 122 Guineas, which the Defendant accepted, and we set forth the Custom of Merchants, that by the acceptance, he became charged for the Debt, &c. Defendant pleads,

Bill of Ex-
change
drawn for
Money won
at Play, is
within the
Statute.

pleads, that this Bill was drawn upon him by the Lord *Chandois* made payable to the Plaintiff, and farther, that the L. *Chandois* ^{Statute} and the Plaintiff were at a Game ^{against ex-} called Hazard, at which the ^{cessive} Lord *Chandois* ^{Gaming} lost 120 Guineas, ^{pleaded.} for the payment of which he drew the Bill on the Defendant, which he accepted; but he al- legeth it is void by the Statute of Gaming, &c. To this Plea we demur, and shew for cause, that this Plea amounts to the general Issue, for if the Statute makes the Bill void, then they might give it in Evidence on ^{Plea a-} *non Assumpsit*, and therefore the ^{mounting} Plaintiff ought to recover, be ^{to the ge-} cause the Defendant has plead- ^{neral Issue.} ed Specially, where he might plead generally. Then this Case is not within the Statute of Gaming, for the Action is grounded upon the Contract of the Defendant, on whom the
Loser

62 **Of the Statute of Gaming.**

Lofer drew the Bill, and he accepted it, by which he undertook to pay it by the Custom of Merchants. If we had brought our Action against the Lord *Chandois*, who lost the Money at Play, he might have taken advantage of the Statute; but the Defendant is a third Person, and is not within the meaning of the Statute, which never intended to avoid collateral Injgements or distinct Contracts.

Then the Plea is not good, because its not said that the acceptance of the Bill was for Security of the Money won at Play.

Then it is not said, that the Money lost at Play was lost on Tick or Credit, which he ought to do to make himself within the benefit of the Statute,
for

for so the words of the Statute are. It is only said that the Lord *Chandos* and the Plaintiff were playing at a Game called *Hazard*, and that the Lord *Chandos* lost 120 Guineas, but does not say they were lost on Tick.

Northey, contra. This is a good Plea; and if it is not allowed, then it will be a plain Evasion out of the Statute of Gaming. It is not material what is said, that it amounts to the general Issue, for in many Cases a Man may plead that Specially, which he may give in Evidence where the Plea has any matter of Law, for he shall not be forced to leave that to a Jury. 3 Cro. 871. 900. Hob. 127. Pop. 69. Dy. 121. then its not material that we have not answered the Custom of Merchants. We do not deny it, but

Where a Man may plead that Specially which he may give in Evidence.

but confess it by Implication, and avoid it by pleading this Special matter. Then if this Case is not within the Statute of Gaming, there is an end of the Statute: For then, if I lose Money at Play, and another gives Bond for it, that shall not be avoided; when as the Statute intended that the Winner should have no way at all to come at his Money that he won; then his saying, that he accepted it is sufficient, for that must be understood for the Money won at Play; then we say, that we plaid with the Plaintiff at Hazard and lost 120 Guineas, and for the payment of them drew a Nore, which is fully within the Statute; and if it were not lost on Tick, there had been no need of a Bill; and pray'd Judgment for the Defendant.

Holt Chief Justice. If a Man loses Money at Play, and some times afterwards gets a Friend to be bound with him for it, is not that within the Statute?

As for the Objection of the general Issue, sure in all Cases, *General Issue.* where a Special Matter is pleaded to avoid a Promise, or the Action which the Defendant admits to be good if the Special Matter was not pleaded; tho' it might be given in Evidence, yet he may plead it Specially, because he confesseth *Where one may plead Specially that which might be given in Evidence.* the Action, but shews Special Matter to avoid it; as if Debt on a Bond be brought, and the Defendant pleads she was a Feme Covert at the time she entred into it, this is a good Plea, yet she might have given it in Evidence: So it is in the Case of Conspiracy, so in Trespass

66 **Of the Statute of Gaming.**

pass for taking away Goods, if the Defendant pleads he bought them in Market Overt its a good Plea, and yet he might give it in Evidence, especially as this Case is here, being an Act of Parliament.

Then, as to the matter, suppose the Action had been brought against the Lord C. he might have taken advantage of that Statute, because he gave the Bill for Money lost at Play, and then the Defendant makes a new Contract, yet it is grounded on the loss of the Money at Play, and it is plainly within the Statute, because its made for the Security of that Money.

*Custom of
Merchants
as to Bills
of Ex-
change.*

Then as to the Custom of Merchants, 'tis the Law of *England*, and the acceptance of the Bill is an exprefs promise to pay it. Indeed if the Plaintiff had

Of the Statute of Gaming. 67

had been indebted to J. S. and he had assigned this Bill to him, and then the Defendant had accepted it, it had been good; so it had in the case of Usury, because J. S. was an honest Creditor, and knew nothing of the Gaming; so if A. is indebted to B. on an Usurious Contract, and B. is justly indebted to C. and A. and B. assign the Usurious Bond to C. in satisfaction for his Debt, it shall not be avoided by the Statute of Usury.

Had this Bill been assigned to a Creditor, it had been good Cause if no fraud

Assignment of an Usurious Bond to a Creditor not to be avoided by the Statute of Usury.

But here the Plaintiff is a Party, and the Bill is payable to him, and so it is a Security for Money lost at Play within the Statute, and is to be avoided by it.

Then the Custom is admitted, but he avoids it by Act of Parliament. But indeed that does

62 Of the Statute of Gaming.

does seem to be an objection that its not said the Money was lost on Tick. If the Lord C. had lost so much Money at Play, and paid it then, and the Plaintiff had let him have had it back again on his Note, that had not been within the Statute, but this is well enough; for had that been the Case, then this Bill had not been given for Money lost at Play (as the Defendant alledgeth) but for Money lent. It is plain by giving of the Note, the Money was lent on Tick. *Per Cur. Quer. nil capiat per billam.*

A Man loses ready Money, and the Winner lets him have it back again on his Note.

Actions

ACTIONS on Wagers and Betting.

CHAP. V. *Vid. sup'* CHAP. IV.

Of Actions on Wagers and Betting. Reciprocal promises between the Gamesters themselves is a good Consideration: But Quære if it be good as to Betters, and the Reason of the Opinions. Form of a Declaration on a Wager at a Cock-match.

ACTION on the Case by *West* against Sir *John Stowell*. Plaintiff declared, that the Defendant, in consideration the Plaintiff promised to the Defendant, that if the Defendant should win a certain match at Shooting, made between the Lord *Effingham* and the Defendant,

dant, then the Plaintiff should pay to the Defendant 10*l*. promised to the Plaintiff, that if the Lord *Effingham* shall win the same Match of the Defendant, the Defendant would pay to the Plaintiff 10*l*. and the Lord *Effingham* won the Match. Here the Consideration is suf-

*Reciprocal
promise be-
tween the
Parties
themselves
good Consi-
deration if
a good Con-
sideration
as to Bet-
tors.*

ficient, being a reciprocal Promise, for all the Communication ought to be taken together. But *per Manwood*, such a reciprocal Promise between the Parties themselves at the Match is sufficient, for there is consideration good enough to each, as the preparing of the Bows and Arrows, the riding or coming to the place appointed to Shoot; the Labour in shooting, the Travel in going up and down between the Marks; But for the Betters by there is not any Consideration if the Bettor doth not give Aim. *Mounson*. A

Cast

Of Wagers and Bets.

71

Cast at Dice alters the Property if the Dice be not false, wherefore then is not here a reciprocal Action? *Manwood.* At Dice the Parties set down their Monies and speak words that do amount to a conditional Gift. *Scilt.* if the other Party cast such a cast he shall have the Money, 2 *Leon.* 154.

Wager upon a Cock-match.

Hertf. Thomas Pellham *queritur de Ric. L. in custod. Mar. marr' Dom' Regis coram ipso Rege existen. pro eo videlt. quod cum 5 die Martij Ann. Regni Dom' Caroli secundi nunc Reg. Anglie, &c. decimo nono apud Ware in Com' pred. quoddam certamen gallinaceu' Anglice a Cock-match, pugnat' fuit inter quendam*

dam gallum coloris variat' Anglice
 Pile colour'd & quendam gallum
 coloris fusci Angl' Dun colour'd,
 tempore cujus quidem pugne pred.
 gallus coloris variat. post seperales
 percussiones per ipsum fact'. adeo
 gravit' percussus fuit per pred.
 gallum coloris fusci quod pred.
 gallus coloris variat. Languere
 & pugnam pred. derelinquere in-
 cipiebat pred. Ric. postea pen-
 dente pugnat' pred. scilicet pred. 5
 die Martij Anno supradict' apud
 Ware pred. in Com' pred. (eif-
 dem Thoma & Rico. adtunc &
 ibid. spectatoribus existen. pugne
 pred.) in considerat. quod pred.
 Thomas ad speciales instantiam &
 requisiconem ipsius Rici. adtunc
 & ibid. deposuit in cavam Angl'
 the Cock-pit, ubi galli pred.
 pugnabant quinq; solidos fore hab.
 per ipsum Ricum. ad usum suum
 proprium si pred. gallus coloris
 variat' in pugna pred. contra pd.
 gallum coloris fusci non prevale-

ret & victor evaderet super se
 assumpsit prefat. Thom' adtunc
 & ibid. fidelit' promisit quod si
 pred. gallus coloris variat' in pug-
 na pred. contra pred. gallum co-
 loris fusci pred. valeret & victor
 evaderet tunc idem Ric. de-
 cem libras monete Anglie eid.
 Thome cum inde postea requisitus
 esset bene et fidelit' solvere &
 contentare vellet. Et idem Tho-
 mas in facto dicit quod pred.
 Gallus coloris variat' pendente
 pugna pred. & post promission' &
 assumpc'on ipsius Rici. pred. ut
 prefertur scilt. pred. 5 die Martis
 Anno supradict' apud Ware,
 pred. in Com' pred. gallum coloris
 fusci adeo percussit quod pred.
 gallus coloris variat' in pugna pd.
 contra pred. gallum coloris fusci
 adtunc & ibid. prevaluit &
 victor evasit pred. tamen Ricus
 promission' & assumpc'on' suas
 pred. minime curans sed machi-
 nans & fraudulent' intendens
 E ipsum

ipsum Thomam in hac parte callide & subdole decipere & defraudare pred. 10 l. aut aliquem inde denarium eid. Thome licet ad hoc faciend. idem Ricus. per ipsum Thomam postea scilt. 10 die Junij Anno decimo nono supradict. apud Ware pred. in Com' pred. requisitus fuit non solvit seu aliquant' contentavit sed ill. ei buc usq; solvere omnino recusavit & adhuc recusat ad damnum ipsius Thome 20 l. & inde producti Sectam, &c.

Vide as to the Wagers supra St. Leigers Case, and Sir John Stowells.

Action of Traver for ten Angels, and converting them. Defendant pleads, that there was a Wager between the Plaintiff and one C. concerning the quantity of Yards of Velvet in a Cloak, and the Plaintiff and C.

Wager about so many Yards of Velvet being in a Cloak

C. each of them delivered into his hand ten Angels, and each of them agreed that if there were ten Yards of Velvet in the Cloak, that then they should be delivered to the said C. and if not to the Plaintiff, and allegeth in *facto* that upon measuring of the Cloak, it was found that there were ten Yards of Velvet therein; whereupon he delivered them to the said C. which is the same Conversion, &c. thereupon it was demurred. *Fenner* and *Popham* held the Plea not good, for it may be that the measuring was false, and therefore he ought to have averred in *facto*, that there were ten Yards, and that it was so found upon the measuring thereof; and he might well have pleaded the general Issue and given all the matter in Evidence, for it is but Evidence; and when he delivered

it according to the intent of the Bargain it was no Conversion. Judgment *pro Quer'* 3 Cr. 870. *Ledeshan and Lubran.*

Walter Whitgreave versus *Ed. Chancy.*

Bar by the Statute against excessive Gaming.

Indebit. Assumpsit for an 100*l.* won at Passage, and for 100*l.* upon account. Defendant as to the second Promise, pleads *non assumpsit & issue.* And as to the first Promise,

Actio non, quia dicit quod bene & verum est quod ipse idem Edrus. assumpsit super se prompred. Walterus quoad pred. primam promissionem & assumptionem superius inde narravit se idem E. ulterius dicit quod pos
29 *dic*

29 diem Decemb. Anno Dom'
1664, (viz.) eod' primo die
Julij, Anno decimo supradiet'
apud S. pred. in Com' pred. idem
E. & pred. W. Ludebant inter se
Taxillis ad pred. Ludum vocat'
Passage super fiduciam Anglice
Tick & credentiam absq; pecu-
niis numeratis Anglice ready
Money, quodq; ipse idem E. ad-
tunc & ibid. ad Ludum illum ad
unum tempus & unum congressum
Anglice Meeting perdidit prefat'
W. 100 l. in pred. prima promiss-
sione & assumpt'one superius men-
conat' super fiduciam & creden-
tiam quodq; ad idem tempus &
eundem congressum supradiet'. apud
S. pred. in Com' pred. Quidam
G. W. & ipse idem E. ludebant
inter se cum Taxillis ad Ludum
pred. super fiduciam & credenti-
am absq; pecuniis numerati quodq;
ipse prefat. E. adtunc & ibid.
ad Lud' ill. ad unum tempus &
ad istum congressum supradiet'. si-

milit' perdidit dicto H. W. summam 30l. super fiduciam & credentiam Quorum quidem promissor' pretextu & vigore Statuti in huiusmodi casu nuper edit. & provis. pred. prima promissio ipsius E. superius in narratione pred. menconat' per eundem E. sic ut presertur fact. devenit & existit vacua & nullius vigoris in Lege Et hoc paratus est verificare, unde petit iudicium si pred. W. acc'onem suam pred. quoad primam promission. & assumpcon. versus ipsum E. here. seu manutenere debeat & Pl. demur.

Per Cur. This Special Plea is good, 1 Lut. 180.

Of Cheats in Gaming.

CHAP. VI.

Actions for deceit at Cards, and the Declaration thereupon. Declaration by a Master in Case for inticing his Apprentice to play at Cards and losing his Master's Money. Declaration against one for cheating him at Cards, at a Game called One and Thirty. Declaration against one who fraudulently got Money of one by false Dice. A Case on the same Subject. Another Case upon the same Subject. Promise that if the Plaintiff used any deceit in a Race, On Request to pay him so much. Where proof to be made in the Action. Where Request not necessarily to be laid.

A Man may have Remedy against those Persons that fraudulently cheat him in Gaming by Action on the Case, and recover his Money lost in Damages; or he may punish them by Indictment at the Queen's Suit, or by Information of the Party grieved.

Actions on the Case, and Declarations thereupon.

Actions on Deceit for deceiving the Plaintiff at Cards at the Game of Mountfaut, by bringing in a Card called the Bum Card, by which they devised, that the Plaintiff should have but such Games as they pleased; by which Cosinage they cheated the Plaintiff of 16 l. Upon not Guilty pleaded the Verdict was found for the Plaintiff and Damages. It was objected,

objected, that the Action did not lie no more than for false Dice: But as to the Case of false Dice, it was ruled that the Action lies; and it was resolved that the Action did lie in this Case, and so it was adjudged in one *Richmont's* Case, who recovered an 100*l.* Damages on such Cosinage. *More, Baxter, Woodyard,* and others.

Action lies for the Master for inticing his Apprentice to depart for six day, and couzening him at Cards. Action lies for the Master, for inticing him, but for the couzening the Servant shall have the Action; therefore if intire Damages are given, it is ill. *Noy p. 105. Valles and Richmont.*

Trespass on the Case brought
by a Master for inticing his
Apprentice to play at Cards,
and losing his Master's Mo-
ney.

M. 43. & 44 El. Rotl. 3272
Brownl. Lond. ss. H. F. attach'
fuit ad respond. T. W. de placito
quare cum idem T. 24 die Sep-
temb' Anno, &c. & continue ab
inde huc usq; extitit & adhuc ex-
istit civis & Liber homo civitat'
Lond. videlt. Liber homo artis
pellipar' London & Inhabitans. in
London pred. videlt. in Paroch'
&c. ac eod. 24 die Sept. Anno
supradict. & per multos Annos
tunc preterit. usus fuisset. & ab
inde huc usq; usus fuit arte Mer-
chandiz. in Civitat. London pred.
Cumq; etiam idem T. eod. die,
&c. Anno, &c. in Paroch' &
Warda pred. recepisset & reti-
nuisset in servitium suum tan-
quam

quam apprenticiū suū quendam T. R. deservend. eid. T. W. tanquam apprentic' suū a (tali die) usq; finem novem Ann. extun prox. sequen' Idemq; T. W. postea scilt. (tali die & Anno) apud London pred. in Paroch' &c. & continue ab inde & huc usq; (talem diem Anno) appunctuasset & Authorizasset dictū T. R. & in eo fiduciam adhibuisset ad vendend. in Merchandiziis ipsius T. W. valenc' mille Librarum Legalis monete Anglie & recipiend. denar' summas pro Merchandiziis illis sic vendit. Cumq; etiam pred. T. R. a predicto tempore quo pred. T. W. ipsam T. R. in servitium suū pred. sic ut presertur recepisset eid. T. W. in negotiis suis servitij sui predict. in omnibus bene & fidelit. deservisset usq; dictū 20 diem Maij Anno, &c. apud &c. pd. pd. tamen H. premissa satie sciens ac malitiose machinans
non

non solum ipsum T. W. de bono
 & fideli servitio pred. T. R. ap-
 prentic. sui penitus deprivar
 verumetiam ipsum T. R. de pe-
 cuniis suis sub custod. pred. T.
 R. existen' spoliare postea scilicet.
 predictis die & Anno, &c. apud
 &c. instigavit & procuravit
 prefat' T. R. ad tunc apprenticium
 ipsius T. W. sic ut prefertur ex-
 isten. seipsum absentare a servitio
 ipsius T. W. ac imbesillare &
 secum asportare diversas denari-
 summas pred. T. W. Magistri sui
 in toto se attingend' ad 100 l.
 Legalis monete Alglie & ad Lu-
 dend. cum eod. H. ad Ludos illi-
 citos videlicet. apud Chartas pictas
 Anglice Cards, Tabulas Anglice
 Tables & Aleas Anglice Dice,
 cum denariis bonis & catallis
 ipsius T. W. pretextu cujus qui-
 dem instigationis & procuratio-
 nis pred. T. R. apprenticius ipsius
 T. W. sic ut prefertur existen'
 postea scilicet. (tali die et Anno.)
 pred.

pred. & per prox' alios dies se-
 peral. inter eundem 20 diem
 Maij & 20 diem Maij Anno,
 &c. apud &c. seipsum absentavit
 a servitio ipsius T. W. Magistri
 sui & in eisdem seperalibus die-
 bus apud &c. imbesillavit & se-
 cum asportavit pred. denarior'
 summas ipsius T. W. in toto se
 attingen' ad pred. 100l. ac cum
 eisdem denar' summis i' suis T.
 W. pred. per procuracionem pred.
 H. cum prefat. H. ad pred. Lu-
 dos illicitos scilt. apud &c. Lu-
 debat predictusq; H. pred. denar'
 summas ipsius T. W. ad illicitos
 Ludos pred. inter pred. 20 diem
 Maij Anno &c. apud, &c. de
 pred. T. R. falso & fraudulent'
 acquisivit & obtinuit cujus pre-
 textu idem T. W. non solum
 bonum. & fidelem servitium pd.
 T. R. a pred. 20 die Maij Anno
 & (usq; talem diem) &c. Anno
 &c. amisit & perdidit verum
 etiam de denar' summis suis pred.
 spoliat'

*spoliat' & defraudat' existit ad
damnum, &c.*

Declaration against one for
fraudulently cheating him at
Cards, at a Game called
One and Thirty.

*ff. P. F. queritur de T. L.
in custod' &c. pro eo videli'
quod cum pred. T. 20 die Octob.
Anno Dom' 1669. machinans
et subdole intendens pred. P. de-
fraudare & decipere et diversas
denariorum summas de ipso P.
injuriose Extorquere eundem P.
apud H. in Com' pred. ad Lu-
dendum cum chartis pictis ipso
Petro ad quandam Ludum Vocat'
One and Thirty pro diversis
pecuniar' summis astute provocas-
set & excitasset ac idem P. per
excitation' illam cum pred'
T. cum chartis pictis ad
Ludum pred. adtunc & ibid.
Lusisset. Idemq; T. chartas pictas
pred.*

Of Cheats in Gaming.

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pred. ad manum ipsius T. fore per
ipsum T. distribui Anglice (to
be Dealt) in cursu distribui de-
buisse pred. P. saepenumero de-
tinuit & alias chartas pictas in
Loco earundem eid. P. distribuit
per quod idem P. magnas dena-
riorum summas eid. T. ad ludam
pd. adiunc & ibid. amisit Idemq;
T. denariorum summas illas sub
colore Lucri falsi deceptive ad-
tunc et ibid. cepit & asportavit et
eundem P. de eisdem defraudavit
ad damnum ipsius P. 20 l. Et
inde producit sectam, &c.

Declaration against one who
fraudulently got Money of
the Plaintiff with false Dice.

B. R. ff. H. 24 and 25 Car. 2.
Rot. 99,

Lond. ff. A. B. Queritur
de C. D. in custod. marr' &c.
pro

1 Narr'
super de-
ceit.

pro eo videlt. quod cum pred. C.
D. (tali die et Anno) apud L.
in Paroch' &c. & marda &c.
machinans devisans et fraudulent'
intendens presat A. B. falsis
Aleis & falso Ludo subdole fran-
dulenti & deceptivè decipere et
defraudare & diversas denario-
rum summas ab eod. A. B. eod
die

Anno

supradict. apud London pred. in
&c. ad Ludend' cum aleis ad
quendam Ludum vocat' Hazard
pro diversis denar' summis ipsius
A. B. cum ipso presat' C. D. cal-
lide subdole & deceptivè sollicita-
vit excitavit provocavit & pro-
curavit per quas quidem sollicita-
tionem provocationem & procu-
rationem ejusdem C. D. idem
A. B. adtunc & ibid. ad Ludum
pred. cum presat. C. D. pro di-
versis pecuniarum summis Lusit
Quodq; ad Ludum illum cum e-
od' A. B. idem C. D. falsis aleis
& falso Ludo adtunc & ibid. in
Ludo

Ludo pred. vocat. Hazard septuagint. pecias auri Guinien' communit. vocat Guinea pieces of Gold quelibet inde pecia existens Legal. monete & Cunei Anglie Coin hujus regni Anglie & existens valor' viginti solidor' ac etiam septendecim libras in pecuniis numeratis de auro & denariis propriis ipsius A. B. ab eod. A. B. ad tunc & ibid. callide subdole falso & fraudulent' illicite & deceptively in manu & possessionem. ipsius C. D. acquisivit obtinuit lucrificavit & asportavit Cumq; etiam pred. C. D. eod' die & Anno, &c. apud L. pred. &c. indebitatus fuisset prefat. A. B. in 120 l. Legalis monete Anglie pro consimili denariorum summa ab eod' A. B. per prefat. C. D. ante tempus illud mutuat' habuit & recept. Et sic inde Indebit. existens idem C. D. in consideratione inde super se assumpsit & prefat' A. B. ad tunc

2 Narr.
super as-
sumpsit
pro pecu-
niis habit

tunc & ibid. fidelit' promissit
 quod ipse pred. C. D. pred. 120 l.
 prefat. A. B. cum inde postea
 repuisitus esset bene & fidelit.
 solvere & contentare vellet pred.
 tamen C. D. promission. & as-
 sumpton. suas pred. minime curans
 sed machinans & fraudulent' in-
 tendens eundem A. B. in hac
 parte callide & subdole decipere
 & defraudare pred. 120 l. eid'
 A. B. non solvit nec ei aliquali-
 ter' pro eisdem huc usq; Contenta-
 vit licet ad hoc faciend' idem
 C. D. per prefat' A. B. postea
 scilt. &c. Anno 24 supradict'
 apud L. pred. in, &c. requisitus
 fuisset Unde idem A. B. dicit
 quod deteriorat' est & damnum
 habet' ad valeatiam 200 l. inde
 &c.

Judicium per nihil dicit.

Breve d' enquiry de damnis
Retorn' inde Vic.

Verdict' pro Quer.

Le final Judgment.

Action

Action on the Case was brought, for that the Defendant at *D.* inticed the Plaintiff to play at Dice, at a Sport called Five or Nine, intending to deceive him, and get his Money; and he, by the Defendant's Perswasion, did play with him at the said Sport, and the Defendant, in that Play, delivered to the Plaintiff *Quosdam Talos veraciter titulos* to Play with, and when the Dice came to the hands of the Defendant, he by practice *falso & fraudulent. quosdam alios talos false & subdole titulos* quos numeros *Quinq;* vel novem aliquo *jaſſu unquam attingere ſciviſſet* adtunc & *ibid.* projecit, and then played with the said false Dice, by which the Plaintiff lost to the Defendant divers sums of Money, amounting to 40*l.* 6*s.* 8*d.* and the Defendant

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dant falsely and fraudulently, under the colour of getting, took and carried away the said Money, to his Damage of 200 Marks. Defendant pleaded not Guilty, and the Verdict was against him.

It was alledged in Arrest of Judgment,

(Talos) a
proper
word for
Dice.

1. That the word *Talos* was no word for Dice, *sed non Allocatur*, for its a proper word.

2. That the word *Lucisset* was written with a c, which is shining, and ought to have been *Lusisset*; but upon view of the Record, it was written with an s. The Plaintiff had Judgment, *Cro. Eliz.* 90. *Bowden* and *Harris*.

If *A.* intice *B.* to play with him at Dice, at a Play called Passage, upon which *B.* plays with him, and when it came to *B.*'s turn to Play, *A.* delivered true Dice with which he should Play, and when it came to the turn of *A.* himself to Play, he throws with false Dice (*viz.*) ^{Deceit} such Dice as he knew would ^{with Dice.} run five or six upon every Die, by which he lost ten Pound. Action on the Case lies for this Deceit by *B.* against *A.* *Hill.* 8. *Car.* 1. *B. R. Hurt &c. Rolls* 1 *Abr.* 100. Though it was moved in arrest of Judgment, that the Declaration was repugnant, for that it was laid, that he plaied with false Dice, (*viz.*) that he *quasdem aleas falsas et falso titulas quas numeros de sex & quinq; super quamlibet aleam quolibet jactu attingere scivit falso & fraudulenter projecit & Lusus*

Lusus est. Yet per Cur. Judgment pro Quer.

Action on the Case upon a promise by *scrogs* against *Griffin*. Plaintiff declared, that whereas such a day, one *Brown* and another did run for a Wager from *St. John Street* to *Highgate*; that he of the said two that first got thither, and came again, should have 5 *l.* which Wager the said *Brown* did win; and whereas after the said Match so performed, the Plaintiff affirmed, that there was Deceit and Covin in the performance of the said Match; upon which the Defendant in Consideration of 12 *d.* to him delivered by the Plaintiff, promised, that if the Plaintiff can prove that any Deceit or Covin was used or practised in the performance of the said Match, that then upon Request he would

Deceit.

*Promise if
the Plain-
tiff any de-
ceit used in
a Race at
request to
pay 5 l.*

would pay to the Plaintiff 5*l*. On
non assumpsit & verdict pro Quer'
 it was moved in arrest of Judg-
 ment that here is not any re-
 quest set forth in the Declarati-
 on; and also that this Deceit is
 enquired of in *London*, where
 as it ought to be in *Middlesex*,
 where the Race was run. *Per*
Cnr. The proof ought to be
 made in this Action, and that
 request is but now matter of
 Conformity, not of necessity.
 And as to the Tryal the Deceit
 is not in Issue, but only the
 Promise, and therefore the Is-
 sue is well tried in *London*, the
 Action also here includes proof
 and request. Judgment *pro*
Quer' 2 Leon. 215. Scraggs and
Griffin.

*Proof to be
 made in
 the Action.
 Request
 where not
 to be laid
 of necessity.*

*Tryal
 where.*

CHAP. VII.

Indictment for cheating at Gaming. Judgment to stand in the Pillory. Indictment not saying vi & armis. Anglice a Trick of Cards, if good. If a Fine may be set in the absence of the Party. Information against Cheats. One is cheated and gives Judgment for the Money, the Court staid Execution. Privilege of London not to be retorned of Juries out of the City, to what Suits it extends. Information for a Conspiracy to cheat one at Cards. Where Judgment may be given against one. Information for keeping a Cock-pit. Writ without any presentment to remove a Bowling Alley. Jacob Hall's Case about dancing on the Ropes. The Form

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of an Indictment for keeping a common Bowling Alley. For keeping unlawful Games in his House. Of Writs prohibitory to remove a Nuisance. The case of Lincolns Inn New Play House.

Indictment for Cheat in Gaming.

IF two Men are common Hazardors, and use with false Dice to Cheat the Queen's Subjects, and they join together, and with false Dice deceive J. S. of his Money at Play with them; they may be indicted for this, and if they are found Guilty, they may be adjudged to stand in the Pillory. *Adjudged to stand in the Pillory.*
2 Rols. Abr. 78. Beckingham and Leson's Case. And they did stand in the Pillory.

F

In-

Indictment was brought against one for being a common Player at Cards, and defrauding the Plaintiff of 40 s. not saying *vi & armis*. *Per Cur.* It is needless. 2. To say *Anglice* a Trick of Cards, without a *Latin* word, there being none for it, is good enough. 1 *Keb.* 652. *Spencer and Hufon.*

Indictment not saying vi & armis. Anglice a trick of Cards quære if good.

In the Case of the King against *Hanscomb* and *Primate North* prayed on Conviction for cheating with false Dice, that the Court would set a Fine in the absence of the Parties, who else would make over their Estates before appearance, and so defraud the King. The Court inclined that this may be done on prayer for the King, but not on the prayer of the Party. *M. 22. Car. 2. B.R.*

if a Fine may be set in the absence of the Parties.

Inform.

*Information against Cheats
in Gaming.*

A Man being cheated at a Tavern in *London*, and having given a Judgment for the Money, moves in the King's Bench to reverse the Judgment upon the fraud; and the Court at present ruled execution to be staid, until the matter be examined. And *Foster* and *Twisden* advised the Party to bring an Information against the Cheat, and also against the Vintner; for they said, that the Privilege of *Londoners* not to be returned on Juries out of the City, extends only to Suits between Party and Party, and not where the King is Party, *1 Levins 53.*

One that is cheated gives Judgment for the Money, if the Court will stay Execution.

Privilege of Londoners, not to be returned of Juries out of the City, to what Suits it extends.

Conspiracy to Cheat one at Cards.

Information for inticing *Wingfeild* by Conspiracy to play with *Thode*, & *deceptive* putting false Dice upon him, and won 70 l. in Gold: This was against *Thode*, *Bennet* and *Thompson*. *Bennet* is found not Guilty, the rest have not yet pleaded, only *Thode* is found Guilty. It was moved in arrest of Judgment, that being all by way of Conspiracy, one alone cannot be Guilty: But *per Cur'* in Action on the Case for Deceit *conspiracione inde habita*, one may be convicted alone; but when its an Action on the Case *Quod conspiraverunt*, one alone cannot be convicted: But here being no pleading by the rest, nor no default

In conspiracy where Judgment may be given against one.

Default by the Plaintiff, Judgment may be given against one; so where it is that three did conspire to get the Party found Guilty to play with W. and that he *deceptive* cheated at Play, its well enough, which the Court agreed to, *Fitz. N. B. Tit. Conspiracy. 24 Car. 2. B. R. Hill.*

Rex vers. Bradford.

Eyre moved to quash an Indictment for erecting a Mountebank-Stage in *quodam communi campo vocat Moorfields.* For that this is no Offence, because it does not appear to be a Publick Place for People to resort to; for the Riot is the Offence, and not the building of the Stage.

Holt Chief Justice. Tho' it be laid to be *tam antea quam postea*, yet its not bad, for 'tis void for the *Postea*. If a Man causes the People to assemble in his own common Fields, its a *Nusance* for his Tricks and his Jack-pudding bring People there. Plead or Demur to it; we will not quash it.

*The Case of Lincoln's-Inn
New Play-House.*

There was a prohibitory Writ issued out to the new Players, *Betterton* and others, who had erected a Play-house in *Little Lincoln's Inn Field*; the Writ recited, that it was a *Nusance* to the Neighbourhood, and therefore prohibited them to continue it; but the Players not obeying this Writ, there

Writ prohibitory for a Nusance.

there was a Rule made for an Attachment, *Nisi*, &c.

Sir *Bartholomew Shower* endeavoured to shew for cause why such Writ should not be granted; for that the Parties had no way to defend themselves, unless it was to come in and be examined upon Interrogatories upon Oath, and they would Swear that it was no Nuisance, it appeared by several Affidavits (which he then shewed) but he said, the most proper way would be to proceed by Indictments, and then the Grand Jury (*viz.*) the whole County would consider whether it were a Nuisance or not.

Indictment.

Pleading
to a prohi-
bitory
Writ.

Prohibiti-
on.

Holt Chief Justice. You are not concluded by this Writ, as to the Right; but you may come in and plead to this Attachment, the general Issue, and if the thing be no Nuisance it is no Fault or Contempt to continue it: Its like the Case of a Prohibition to the Ecclesiastical Court, you make a suggestion that the Defendant has proceeded there *contra prohibitionem regiam*, upon which if there goes an Attachment, the Defendant may come and take Issue, that he did not proceed after the Prohibition granted. There was a Case in this Court of *Jacob Hall*, where the Court sent such a Writ as this is here, and made him pull down his Stage; but indeed that of a Rope-dancer is a Nuisance *in se*, but here it is only so in Consequence, for the acting of Plays
you

you say is only a Nufance as it draws the People, and Coaches, and Sharpers thither.

Sir *Bart. Showre*. This Writ of *Leproso amovendo* is a Writ of extraordinary Nature; I think it has not been granted these hundred Years; but even in that Writ the Sheriff is commanded to enquire by twelve Men, so that the Law will not determine a Man's Right but by a Jury. Besides, in this particular Case, the Prosecution is carried on by the Patentees of the Old Play-house, and not by the Inhabitants; which shews they do not think this a Nufance; and in truth, the Question will be at last, whether these Letters - patents have the sole Liberty of setting up a Play-house, be not only a Licence and Authority which determined by the King's death,

and so does not bind his Successor, and the New Players are Licensed by his present Majesty.

Chief Justice *Holt*. Its a Case of great consequence, and therefore we will take time to consider of it.

Eyre J. I think the most proper way is to proceed by Indictment. Adjourned.

For keeping a Cock-Pit.

Information (or Indictment) against the Defendant for keeping a Cock Pit, on *Rolls* 2. 79. and 2 and 3 *P. M. c. 9.* And a Verdict was against the Defendant, and Judgment was by Counsel prayed upon it, tho' it was not *contra formam statutum* this being an Offence at Common

Where it need not be said contra formam statutum.

mon

mon Law, as well as a Dicing House, and cannot be set up by any License, and as in 3 *Inst.* Noy had a Writ without any presentment on 33 H. 8. *c.* 9. *Señ.* 11. to remove a Bowling-Alley in St. Dunstons, and it was pulled down as a common Nuisance: And so was Jacob Hall's Dancing-house. And the Defendant being convicted for keeping a common Cockpit six days; the Court conceived it an Unlawful Game, and took their Measures by 33 H. 8. *c.* of 40 s. a day, tho' the Indictment were at Common Law, and he was fined 12 l. *Tr.* 27. *Car.* 2. *B. R. Dom' Rex & Howell.*

Jacob

*Jacob Hall's Case was this,
about Dancing on the Ropes.*

The Court of King's Bench being informed by Affidavit, that he was building a Booth for Dancing on the Ropes at *Charing-Cross*, gave Order to Indict him for a Nuisance, and present this to the Grand Jury in order thereto, and they would have the Workmen taken notice of as Actors in it, the thing it self being anciently used in old Play houses. And *Hales* Chief Justice said, *Noy* prayed a Writ to remove a Bowling-Alley near *St. Dunstan's*, and had it without any presentment at all; and after the Court being informed of Working, sent for him and the Workmen by a Tipstaff, and because he would not enter into a

Recog-

Recognizance not to build on,
they committed him, and then
he ceast, M. 23. Car. vide Mod.
76.

The Form of an Indict- ment for keeping a common Bowling-alley.

Kent ff. *Furatores pro Dom^o
Regina super sacramentum suum
presentant quod A. R. de C. in
dicto comit' Tyler 2 die Junij
Anno Regni, &c. & continue
post. dictum diem Anno supra-
dict' usq; primum diem mensis
Julij Anno supradict' apud C.
pred. in Comit' pred. quendam
communem locum jaciendi globu-
los Anglice a common Bowling
Alley pro lucro ipsius A. R. pro-
prio & ad Ludend' tunc ibid.
cum globulis Anglice vocat' Bowls
illicite tenuit custodivit & ma-
nutenuit*

*nutennit contra formam cujusdam
statuti in Parliam. Dom' Henrici
nuper Regis Anglie octavi Anno
Regni sui tricesimo tertio in hujus-
modi casu edit. & provis. Et
quod J. S. de C. pred. in pred.
comitat' Labourer & tres alie
persone ignote dicto secundo die
Junij Anno supradict' dictum
communem Locum visiterunt ac
ibid. cum globulis Anglice vocat'
Bowls insimul & illicite Luserunt
contra formam Stat' predict'.*

Aliter.

Indictment for maintain-
ing Unlawful Games in
his House.

*Juratores pro Dom' Reg' super
sacramentum suum presentant qd.
A. B. de C. in Com' N. Inn-
holder decimo die Febr' Anno
Regni,*

Regni, &c. & multis aliis diebus
 & vicibus tam ante quam post
 apud C. pred. in Com' pred. pro
 lucro advantag' & manutenentia
 ipsius A. B. propriis custodivit
 & manutenit domum commu-
 nem pro illicitis Ludis & die &
 Anno supradict' permittebat quos-
 dam servos Laboratores Anglice
 Labourers Artificers colonos Ang'
 Husbandmen & alios homines
 ignotos exercere seipsos &
 Ludere ad Ludos illicitos (viz.)
 ad chartas pictas Anglice
 Tables & aleas in domo sua
 pred. pro lucro suo advantag' &
 manutenent. pred. contra formam
 statuti in hujusmodi casu nuper
 edit' & provis' & contra pacem
 publicam, &c.

Indictment

Indictment against one
upon his Recognisance
for suffering Unlawful
Games in his House.

*Juratores presentant, &c. Quod
J. D. de &c. tali die & Anno
& diversis aliis diebus & vici-
bus tam ante quam post, &c. pro
lucro advantag' & manutenentia
propriis custodivit & manutenuit
domum communem pro ludis Ang'
Sports Ebrietate Anglice Drun-
kenness & malis gesturis & tunc
& ibid. permittebat quosdam La-
boratores Anglice Labouring-
men Artifices & Colonos Ang'
Husbandmen & alios homines
ignotos consumere eorum tempus
& ludere ad ludos illicitos (viz.)
aleas chartas pictas &c. in domo
sua pred. pro lucro advantagio &
manutenentia propriis pred. con-
tra*

*tra formam statut. &c. & contra
tenorem cujusdam recognisancⁱ
per eum cognitⁱ conservare bonas
gesturas Anglice good Rules in
doma sua, &c. contra pacem pub-
licam, &c.*

*Det pro amerciament in Leet
pro Lusu globul. M. 23 & 24 El.
Rot. 1297.*

CHAP. VIII.

*Of the Power of the Justices to
enter into any Houses suspected
to keep Unlawful Games, and
to Arrest the keeper of such a
House, and the Players there,
and imprison them till they
find Sureties not to offend.
Of Servants and Apprentices
offending. Misdoers to be
admitted to no Fine under
6s. 8d. They that keep an
Unlawful Gaming-house to
forfeit 40s. per diem, and the
Persons haunting them to pay
6s. 8d.*

Of the Power of Justices.

6s. 8d. for every time. At Stafford Assizes, he that kept the Gaming House, Fined 5 l. and every one that played 20s. Information, &c. when to be commenced. Where Suits to be sued and prosecuted.

I shall now come to the Power of the Justices as to using Unlawful Games, and keeping such Gaming Houses.

To enter into any House suspected to keep Unlawful Games.

Every Justice of Peace may as well within the Liberties as without, enter into any common House or Place, where any playing at Bowls, Coits, Kails, Half-bowls, Tennis, Dice, Cards, Tables, or at any other Game prohibited by any other former Statute (of which sort be Footbal, and casting of the Stone by 12 R. 2. c. 10.) or playing at any Unlawful Game already invented, or hereafter to be invented, shall be suspected to be used against the Statute of 33 H. 8. c. 9. and

Of the Power of Justices. 115

c. 9. and may as well arrest the *To arrest*
 Keepers of such place as the *the keepers*
 Players there, and imprison *of the*
 them till such Keepers find Sure- *House, and*
 ties to the King's Use, to be *Players*
 bound by Recognisance, or *there, and*
 otherwise no longer to occupie *imprison*
 any Play or Place, and that the *them till*
 Persons found there playing be *they find*
 in like sort bound by themselves *Sureties not*
 or with Sureties at the Discre- *to offend.*
 tion of the Taker no more to
 Play or haunt to any of the
 said places, or at any of the
 said Games. And every Justice
 of Peace finding or knowing
 any Person not excepted by
 this Act (33 H. 8. c. 9.) to use
 any Unlawful Game contrary to
 this Act, may commit him to
 Ward, there to remain without
 Bail or Mainprise, until he be-
 come bound by Obligation to
 the King's Use in a Sum that
 shall be thought reasonable by
 that Justice, that he shall not
 from thenceforth use such Un-
 lawful

lawful Game, *Lamb. 345. Dalt. 63. cap. 23.*

*Servants
and Ap-
prentices.*

By Statute 11 H. 7. c. 2. No Apprentice or Servant in Husbandry, Labourer, no Servant Artificer shall play at Tables from the 10th of *January* next coming, but only for Meat and Drink, nor at Tennis, Claysh, Dice, Cards, Bowls, or any other Unlawful Games in no wise out of *Christmas* and in *Christmas* to play only at the dwelling House of the said Master, or where the Master of any Servant is present, upon pain of imprisonment by the space of a day in the Stocks openly.

11 H. 7. c. 2. The Householder, where Dicing, Carding, Tennis, Coits, Claysh, or any other Unlawful Game afore rehearsed, shall be used otherwise than as is afore rehearsed, and that lawfully be presented before Justices of the Peace, the
Major

Of the Power of Iustices. 117

Major or Sheriff in his Turn,
or Steward in his Leet, or by
Examination had before the
said Justice of Peace, That
Proceſs be made upon the ſame
as upon Indictment of Treſ-
paſs againſt the King's Peace;
that the miſdoers be admitted
to no Fine under the ſum of
6 s. 8 d.

*Miſdoers to
be admit-
ted to no
Fine under
6 s. 8 d.*

Its an Article of Inquiry at
the Seſſions, if any for Lucre
fake keep any place of Bowling,
Tennis, Dicing, or other Un-
lawful Games, he ſhall forfeit
40 l. for every day, and every
Perſon haunting it, and play-
ing there, ſhall forfeit for every
time 6 s. 8 d.

*They that
keep an Un-
lawful
Gaming-
houſe, to
forfeit 40 s.
per day,
and the
Perſon
haunting
to forfeit
for every
time 6 s.
8 d.*

If any ſhall in Stage-play,
Interludes, Show, or May-
game jeſtingly, and profanely
ſpeak of or uſe the Holy Name
of God or Chriſt Jeſus, or the
Holy Trinity, he ſhall forfeit
10 s. every time to the King
and to the Informer, 3 Jac. c. 21.

At

Of the Power of Justices

At the *Lent Assises at Stafford*,
 29 *Eliz.* before *Manwood* Chief
 Baron, and *Windham* Justices
 of Assise there, divers were
 taken by L. one of the Justices
 of Peace there, and were in-
 dicted thereof, and he that
 kept the House where they
 play'd also, and he that kept
 the House was fined at 5 *l.* and
 every one that played 20 *s.* and
 because they were present in
 Court, they were committed
 to Prison till they paid their
 Fines, and there were above
 20 of them that played in the
 said House at one time, *Dalt.*
 64. c. 28.

He that
 kept the
 Gaming
 House fined
 at 5 *l.* and
 every one
 that played
 at 20 *s.*

*Informations, &c. when to be
 commenced.*

Note, All Informations,
 Plaints, Actions and Suits a-
 gainst such as keep common
 Houses of Unlawful Game and
 against such as play therein,
 against

against 33 H. 8. c. 9. Sect. 17.
No. 2. shall be commenced
within the Year after the Of-
fence committed, otherwise no
advantage or Suit thereof shall
be taken, as appears by the said
Statute, 33 H. 8. c. 9.

*Where Suits on Statute 33 H. 8.
to be Sued and prosecuted.*

By Statute 33 H. 8. c. 9. All
Suits upon the Statutes of Un-
lawful Games shall be heard,
sued and prosecuted at the As-
sises or Sessions of the County
where the Offence is commit-
ted, and Pasch. 23 Car. 1. not
out of the County.

Sir William Bronker was
brought before a Justice of
Peace upon Information made
that he had cheated one with
false Dice: The Justice required
him to find Sureties for his good
Behaviour, and upon his refusal
commits him to Prison. Sir Wil-
liam brings his Habeas Corpus in
B. R.

B. R. and upon the Return this matter appeared; the Prisoner prays by his Counsel to be delivered, because there appeared no matter sufficient upon the Return, why he should be committed; but because the Gaoler desired time to amend the Return, the Court granted it, and would not deliver the Prisoner, but took Bail for his Appearance, and *per Cur* a Justice of Peace cannot bind one to the good Behaviour upon a general Information, or commit him to Prison for refusing to find Sureties for his good Behaviour on such Information. *Stiles.*

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*Abstract of an Act passed in
the 9th Year of Q. Ann.
Entituled, An Act for
the better prevent-
ing of Excessive and
Deceitful Gaming,
with some Observations
thereon.*

THE Act hath a Threefold Re-
spect, viz. To excessive Ga-
ming, deceitful Gaming, and
quarrelsome Gaming.

As to excessive Gaming:

The Statute hath an Eye, First, To Securities
Securities for Money, &c. won Personal
at Gaming: And Secondly, To and Real.
ready Money or Goods, paid or
delivered upon Gaming.

G

As

As to Securities :

SECTION I.

*Personal
Securities,
&c. void.*

Be it enacted, That from and after the First Day of *May, 1711.* all Notes, Bills, Bonds, Judgments, Mortgages, or other Securities or Conveyances whatsoever, given, granted, drawn or entered into, or executed by any Person or Persons whatsoever, where the whole or any Part of the Consideration of such Conveyances or Securities shall be for any Money, or other valuable Thing whatsoever, won by gaming or playing at Cards, Dice, Tables, Tennis, Bowls, or other Game or Games whatsoever, or by betting on the Sides or Hands of such as do game at any of the Games aforesaid, or for the reimbursing or repaying any Money, knowingly lent or advanced for such Gaming or Betting as aforesaid, or lent or
ad.

advanced at the Time and Place of such Play, to any Person or Persons so gaming or betting as aforesaid; or that shall, during such Play, so play or bet, shall be utterly void, frustrate, and of none effect, to all Intents and Purposes whatsoever, any Statute, Law, or Usage to the contrary thereof, in any wise notwithstanding. And that where such Mortgages, Securities, or other Conveyances, shall be of Lands, Tenements or Hereditaments, or shall be such as incumber or affect the same, such Mortgages, Securities, or other Conveyances, shall enure and be to and for the sole Use and Benefit of, and shall devolve upon such Person or Persons as should or might have, or be entitled to such Lands, Tenements or Hereditaments, in case the said Grantor or Grantors thereof, or the Person or Persons so incumbering

Real Securities of Lands, to devolve upon those to whom the next Right is, as if the Grantors were dead.

the same, had been naturally dead; and as if such Mortgages, Securities, or other Conveyances had been made to such Person or Persons, so to be entitled, after the Decease of the Person or Persons so incumbring the same: And that all Grants or Conveyances, to be made for the preventing of such Lands, Tenements or Hereditaments, from coming to, or devolving upon such Person or Persons, hereby intended to enjoy the same, as aforesaid, shall be deemed fraudulent and void, and of none effect, to all Intents and Purposes whatsoever.

The Statute saith, all Notes, Bills, Bonds, Judgments, Mortgages, or other Securities or Conveyances whatsoever, &c.

Q. If a Promise by Assumpsit be within the Words, Notes, Bills, &c. or other Securities or Conveyances?

This

This Section limits not to any Sum, but is for Money, or other valuable Thing whatsoever won by Gaming.

The Words are, or other valuable Thing whatsoever [won] by Gaming, is intended; or to be won by Gaming.

One owes me Money, bonâ fide, on Bond a Year ago; now we meet, and I agree, if his Horse wins, I will deliver the Bond up: This is not properly giving, granting, &c. (it being so long before) yet it's within the Intent of the Act.

SECTION II.

Enacted further, That from and after the said First Day of May, any Person or Persons whatsoever, who shall at any Time or Sitting, by playing at Cards, Dice, Tables, or other Game or Games whatsoever, or by betting on the Sides or Hands of such as do play at any of the

Ready Money to the Value of 10 l. the whole, or Goods to that Value lost, recoverable by the Loser in Three Months.

Games aforesaid, lose to any one or more Person or Persons so playing or betting, in the whole the Sum or Value of Ten Pounds, and shall pay or deliver the same, or any Part thereof, the Person or Persons so losing and paying, or delivering the same, shall be at Liberty, within Three Months then next, to sue for and recover the Money or Goods so lost and paid or delivered, or any Part thereof, from the respective Winner and Winners thereof, with Costs of Suit, by Action of Debt founded on this Act, to be prosecuted in any of Her Majesty's Courts of Record; in which Actions or Suits, no Essoign, Protection or Wager of Law, Privilege of Parliament, or more than one Imparance shall be allowed; in which Actions it shall be sufficient for the Plaintiff to alledge, That the Defendant or Defendants are indebted to the Plain-

Plaintiffs, or received to the
 Plaintiff's Use, the Monies so
 lost and paid, or converted the
 Goods won of the Plaintiff's to
 the Defendant's Use, whereby
 the Plaintiff's Action accrued to
 him, according to the Form of
 this Statute, without setting forth
 the Special Matter; and in case
 the Person or Persons who shall
 lose such Money, or other Thing
 as aforesaid, shall not within
 the Time aforesaid, really and
bonâ fide, and without Covin or
 Collusion sue, and with effect
 prosecute for the Money, or other
 Thing, so by him or them lost and
 paid, or delivered as aforesaid, it
 shall and may be lawful to and for
 any Person or Persons, by any
 such Action or Suit as aforesaid,
 to sue for and recover the same,
 and treble the Value thereof,
 with Costs of Suits, against such
 Winner or Winners as afore-
 said; the one Moiety thereof to
 the

For Default;
 any other
 Person may
 sue for the
 same, and
 recover it,
 with treble-
 Value.

the Use of the Person or Persons that will sue for the same, and the other Moiety to the Use of the Poor of the Parish where the Offence shall be committed.

The Loser is at liberty within Three Months then next to sue for and recover the Money, &c. The Suit must be commenced within the Three Months, the Recovery may be afterwards.

Note, This Paragraph extends not to any Sum of Money or Goods lost under 10l.

SECTION III.

*Remedy in
Case of Con-
cealment of
Money, or
Goods lost.*

And for the better Discovery of the Monies or other Thing so won, and to be sued for and recovered as aforesaid; Enacted further, That all and every the Person or Persons, who by Vertue of this present Act shall or may be liable to be sued for the same,

same, shall be obliged and compellable to answer upon Oath, such Bill or Bills as shall be preferred against him or them, for discovering the Sum and Sums of Money, or other Thing so won at Play as aforesaid.

Note, The Winner before this Act was not compellable to discover, neither needed he to answer to a Bill in Chancery, praying such Discovery, it being to make him liable to Forfeitures and Penalties. But now by this Clause he must answer, and not demur to the Bill:

Proviso, That upon Discovery ^{Repayment} and Repayment of the Money, ^{on Discovery.} or other Thing so to be discovered and repaid as aforesaid, the Person or Persons who shall so discover and repay the same as aforesaid, shall be acquitted, indemnified and discharged, from any further or other Punishment.

For-

Forfeiture or Penalty, which he or they may have incurred by the playing for, or winning such Money, as other Thing so discovered and repaid as aforesaid; any former or other Statute, Law, or Usage, or any Thing in this present Act contained, to the contrary thereof in any wise notwithstanding.

SECTION IV.

*Deceitful
Gaming.*

Enacted further, That if any Person or Persons whatsoever, at any Time or Times after the said First Day of *May*, 1711. do, or shall, by any Fraud or Shift, Couzenage, Circumvention, Deceit, or unlawful Device, or ill Practice whatsoever, in playing at, or with Cards, Dice, or any the Games aforesaid, or in or by bearing a Share or Part in the Stakes, Wagers or Adventures, or in or by betting on the Sides or Hands of such as do or shall play

play as aforesaid, win, obtain or acquire to him or themselves, or to any other or others, any Sum or Sums of Money, or other valuable Thing or Things whatsoever; or shall at any one Time or Sitting, win of any more, or one Person or Persons whatsoever, above the Sum or Value of Ten Pounds, that then every Person or Persons so winning, by such ill Practice as aforesaid, or winning at any one Time or Sitting above the said Sum or Value of Ten Pounds, and being convicted of any of the said Offences, upon an Indictment or Information to be exhibited by him or them for that Purpose, shall forfeit five times the Value of the Sum or Sums of Money, or other Thing so won, as aforesaid; and in case of such ill Practice as aforesaid, shall be deemed infamous, and suffer such Corporal Punishment as in Cases of wilful

For above the Value of 10 l.

The Penalties.

ful Perjury, and such Penalty to be recovered by such Person or Persons as shall sue for the same by such Action as aforesaid.

Or shall at any one Time or Sitting.

Suppose the Game was Chess, which single Game may last a Week, or Month, or Year, (as hath been done) the Gamesters locking up the Chess-board and Chess-men and opening them in the same Posture as they were left:

Q. Whether this one Game shall be expounded one Sitting or Time; or whether the Person that cheats at several Sittings during the Continuance of the said Game, shall so often incur the Penalties and Forfeitures?

Note, The Penalties are great, as Forfeiture of Five times the Value, Corporal Imprisonment, and becoming Infamous, (that is) not to be admitted a Witness in a Court of Record.

And

And whereas divers leud and dissolute Persons live at great Expences, having no visible Estate, Profession or Calling, to maintain themselves, but support those Expences by Gaming only. Gamesters, that have no visible Estate, to give Security for their good Behaviour. Be it further enacted, That it shall and may be lawful for any Two or more of Her Majesty's Justices of the Peace, in any County, City or Liberty whatsoever, to cause to come or to be brought before them, every such Person or Persons within their respective Limits, whom they shall have just Cause to suspect to have no visible Estate, Profession or Calling, to maintain themselves by, but do for the most Part support themselves by Gaming. And if such Person or Persons shall not make it appear to such Justices, that the principal Part of his, or their Expences is not maintained by Gaming, that then such Justices

H shall

shall require of him or them sufficient Securities for his or their good Behaviour for the Space of Twelve Months ; and in Default of his or their finding such Securities, to commit him or them to the Common Gaol, there to remain until he or they shall find such Sureties as aforesaid.

And in Default of finding such Securities, to be imprisoned.

Playing
for above
20 s. a
Breach of
good Behaviour.

And if such Person or Persons so finding Sureties as aforesaid, shall, during the Time for which he or they shall be so bound to the good Behaviour, at any one Time or Sitting play or bet for any Sum or Sums of Money, or other Thing, exceeding in the whole the Sum or Value of 20 s. that then such Playing shall be deemed or taken to be a Breach of his or their Behaviour, and a Forfeiture of the Recognizance given for the same.

Gamsters quarrelling, so forfeit their Goods, &c. and suffer Imprisonment for 2 Years.

And for the preventing of such Quarrels as shall and may happen upon the Account of Gaming ; further enacted, That in Case any Person or Persons whatsoever shall assault and beat, or shall challenge or provoke, to fight any other Person or Persons whatsoever, upon Account of

of any Money won by Gaming, Playing or Betting, at any of the Games aforesaid, such Person or Persons assaulting and beating, or challenging or provoking to fight such other Person or Persons, upon the Account aforesaid, shall, being thereof convicted, upon an Indictment or Information to be exhibited against him or them for that Purpose, forfeit to Her Majesty, Her Heirs and Successors, all his Goods, Chattels, and Personal Estate whatsoever; and shall also suffer Imprisonment without Bail or Mainprize, in the Common Gaol of the County where such Conviction shall be had, during the Term of Two Years.

Provifo, That nothing in this Act shall prevent or hinder any Person or Persons from Gaming or Playing at any of the Games aforesaid, within any of Her Majesty's Palaces of *St. James*, or *Whitehall*, during such Time as Her Majesty, Her Heirs or Successors shall be actually resident at either of the said Two Palaces, or in any other Royal Palace where Her Majesty, Her Heirs or Successors shall be actually resident, during

*Provifo, for
Playing in
the Queen's
Palaces.*

ring the Time of such actual Residence, so as such Playing be not in any House, Lodging or other Part of the said Palaces; the Freehold or Inheritance whereof is out of the Crown, or in Lease to any Person or Persons, during such Time as such Freehold, &c. shall be out of the Crown, or such Lease shall continue, and so as such Playing be for ready Money only.

F I N I S.